



IOWA ADMINISTRATIVE BULLETIN

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October 31, 2012

NUMBER 9
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PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2012

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 21 '11	Jan. 11 '12	Jan. 31 '12	Feb. 15 '12	Feb. 17 '12	Mar. 7 '12	Apr. 11 '12	July 9 '12
Jan. 6	Jan. 25	Feb. 14	Feb. 29	Mar. 2	Mar. 21	Apr. 25	July 23
Jan. 20	Feb. 8	Feb. 28	Mar. 14	Mar. 16	Apr. 4	May 9	Aug. 6
Feb. 3	Feb. 22	Mar. 13	Mar. 28	Mar. 30	Apr. 18	May 23	Aug. 20
Feb. 17	Mar. 7	Mar. 27	Apr. 11	Apr. 13	May 2	June 6	Sep. 3
Mar. 2	Mar. 21	Apr. 10	Apr. 25	Apr. 27	May 16	June 20	Sep. 17
Mar. 16	Apr. 4	Apr. 24	May 9	May 11	May 30	July 4	Oct. 1
Mar. 30	Apr. 18	May 8	May 23	***May 23***	June 13	July 18	Oct. 15
Apr. 13	May 2	May 22	June 6	June 8	June 27	Aug. 1	Oct. 29
Apr. 27	May 16	June 5	June 20	***June 20***	July 11	Aug. 15	Nov. 12
May 11	May 30	June 19	July 4	July 6	July 25	Aug. 29	Nov. 26
May 23	June 13	July 3	July 18	July 20	Aug. 8	Sep. 12	Dec. 10
June 8	June 27	July 17	Aug. 1	Aug. 3	Aug. 22	Sep. 26	Dec. 24
June 20	July 11	July 31	Aug. 15	Aug. 17	Sep. 5	Oct. 10	Jan. 7 '13
July 6	July 25	Aug. 14	Aug. 29	***Aug. 29***	Sep. 19	Oct. 24	Jan. 21 '13
July 20	Aug. 8	Aug. 28	Sep. 12	Sep. 14	Oct. 3	Nov. 7	Feb. 4 '13
Aug. 3	Aug. 22	Sep. 11	Sep. 26	Sep. 28	Oct. 17	Nov. 21	Feb. 18 '13
Aug. 17	Sep. 5	Sep. 25	Oct. 10	Oct. 12	Oct. 31	Dec. 5	Mar. 4 '13
Aug. 29	Sep. 19	Oct. 9	Oct. 24	***Oct. 24***	Nov. 14	Dec. 19	Mar. 18 '13
Sep. 14	Oct. 3	Oct. 23	Nov. 7	***Nov. 7***	Nov. 28	Jan. 2 '13	Apr. 1 '13
Sep. 28	Oct. 17	Nov. 6	Nov. 21	***Nov. 21***	Dec. 12	Jan. 16 '13	Apr. 15 '13
Oct. 12	Oct. 31	Nov. 20	Dec. 5	***Dec. 5***	Dec. 26	Jan. 30 '13	Apr. 29 '13
Oct. 24	Nov. 14	Dec. 4	Dec. 19	***Dec. 19***	Jan. 9 '13	Feb. 13 '13	May 13 '13
Nov. 7	Nov. 28	Dec. 18	Jan. 2 '13	Jan. 4 '13	Jan. 23 '13	Feb. 27 '13	May 27 '13
Nov. 21	Dec. 12	Jan. 1 '13	Jan. 16 '13	Jan. 18 '13	Feb. 6 '13	Mar. 13 '13	June 10 '13
Dec. 5	Dec. 26	Jan. 15 '13	Jan. 30 '13	Feb. 1 '13	Feb. 20 '13	Mar. 27 '13	June 24 '13
Dec. 19	Jan. 9 '13	Jan. 29 '13	Feb. 13 '13	Feb. 15 '13	Mar. 6 '13	Apr. 10 '13	July 8 '13

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
11	Wednesday, November 7, 2012	November 28, 2012
12	Wednesday, November 21, 2012	December 12, 2012
13	Wednesday, December 5, 2012	December 26, 2012

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, November 13, 2012, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Practice privilege for out-of-state CPAs and CPA firms, 6.1(3), 7.1, 13.6(2), 20.5, 21.3(2),

21.5 Filed **ARC 0413C** 10/31/12

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Human resources enterprise, amendments to chs 50 to 54, 56 to 61, 63 Filed **ARC 0401C** 10/17/12

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Licensure of pesticide applicators; grain warehouse storage, 45.3(6), 45.4, 45.22, 90.2,

90.10, 90.21 Filed **ARC 0392C** 10/17/12

Chronic wasting disease—age of slaughtered Cervidae subject to testing, 64.104, 64.106(1)

Filed Emergency After Notice **ARC 0391C** 10/17/12

Licensed grain dealers—canceled credit-sale contracts, 91.11(8)"a" Notice **ARC 0422C** 10/31/12

ALCOHOLIC BEVERAGES DIVISION[185]

COMMERCE DEPARTMENT[181]"umbrella"

Mixed drinks or cocktails not for immediate consumption, 4.5 Filed **ARC 0406C** 10/17/12

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]"umbrella"

Washington, D.C., internship grant, rescind ch 16 Filed **ARC 0396C** 10/17/12

Skilled workforce shortage tuition grant program, ch 23 Filed **ARC 0397C** 10/17/12

Iowa grant program, 27.1 Filed **ARC 0394C** 10/17/12

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]"umbrella"

Voting procedures, amend ch 3; adopt ch 12; rescind chs 16, 19 Notice **ARC 0428C** 10/31/12

ECONOMIC DEVELOPMENT AUTHORITY[261]

Accelerated career education (ACE) program—capital costs component, updated references,

amendments to ch 20 Notice **ARC 0404C** 10/17/12

Innovation and commercialization activities, amend chs 101, 103 to 105, 107, 109, 111, 114;

adopt chs 102, 106, 108; rescind ch 112 Notice **ARC 0408C** 10/17/12

HUMAN SERVICES DEPARTMENT[441]

Forms to obtain client information for public assistance programs, 9.7(1)"b" Filed **ARC 0420C** 10/31/12

Medicaid eligibility—income attributable to social security cost-of-living adjustment,

75.1(39), 75.53(4)"b" Notice **ARC 0432C** 10/31/12

Iowa Medicaid enterprise compliance with Affordable Care Act, amendments to chs 77 to 79

Notice **ARC 0434C** 10/31/12

Home- and community-based habilitation services—rate caps, unit of service, 79.1(2),

79.1(24)"a" Notice **ARC 0436C** 10/31/12

Update of terminology to "intellectual disability," amendments to ch 82 Notice **ARC 0433C** 10/31/12

Managed care—consent for state fair hearing, 88.8(6), 88.68(7) Notice **ARC 0435C** 10/31/12

Child care centers and child development homes—exemption from reevaluation of

employees' record checks, 109.6(6)"g," 110.7(3)"c" Filed **ARC 0418C** 10/31/12

Basic rate of maintenance for foster family care, 156.6 Filed **ARC 0419C** 10/31/12

Supervised apartment living; eligibility for independent living program, 202.9, 202.11(7)"a"

Filed **ARC 0417C** 10/31/12

IOWA FINANCE AUTHORITY[265]

Low-income tax credit program—2013 qualified allocation plan, 12.1, 12.2 Filed **ARC 0427C** 10/31/12

Posting of solicitations for formal bids and requests for proposals, 15.4 Filed **ARC 0430C** 10/31/12

Water pollution control and drinking water state revolving funds—annual loan servicing fee,

26.5(2)"c" Filed **ARC 0431C** 10/31/12

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Conveyance safety program—operating without a permit, 71.7(1) Notice **ARC 0411C** 10/31/12

Boilers and pressure vessels—low-pressure boilers, code-stamp protocols, 90.1, 91.1(2)
Filed **ARC 0416C**..... 10/31/12

PAROLE BOARD[205]

CORRECTIONS DEPARTMENT[201]“umbrella”

Parole and work release decisions, 8.15 Filed **ARC 0421C**..... 10/31/12

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Pharmacy pilot or demonstration research projects, 8.40 Filed **ARC 0393C**..... 10/17/12

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Cosmetology, 61.12, 61.13, 61.15 Notice **ARC 0437C**..... 10/31/12

Sign language interpreters and transliterators—examinations for licensure, 361.2(1)“d”

Filed **ARC 0405C**..... 10/17/12

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Fees of neutrals, 1.8 Filed **ARC 0395C**..... 10/17/12

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]“umbrella”

Confidentiality of complaint and investigative information; discipline; continuing education,

8.7, 8.15, 11.2(1)“b” Filed **ARC 0412C**..... 10/31/12

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]“umbrella”

Mailing address for treasurer of state, unclaimed property division, 13.1(14)

Filed Without Notice **ARC 0410C**..... 10/31/12

REVENUE DEPARTMENT[701]

Administration; individual, corporation income, franchise and fiduciary income taxes,

amendments to chs 8, 40, 42, 52, 53, 58, 89 Filed **ARC 0398C**..... 10/17/12

Sales and use tax refund for eligible businesses, 12.19 Filed **ARC 0414C**..... 10/31/12

Excise tax rates on motor fuel, 68.2(2) Filed **ARC 0399C**..... 10/17/12

Classification of real estate—housing development property, assessment of platted lots, 71.1

Filed **ARC 0400C**..... 10/17/12

Telecommunications sourcing; prepaid wireless E911 surcharge; central office equipment

exemption, 224.6(2)“b,” 224.8, 224.9 Notice **ARC 0407C**..... 10/17/12

Certain inputs used in taxable vehicle wash and wax services, 225.7 Filed **ARC 0403C**..... 10/17/12

Sanctioned baseball and softball tournament facility and movie site, 235.2 Filed **ARC 0402C**..... 10/17/12

Effective date of taxation rate increases or decreases when certain services are furnished,

240.7 Filed **ARC 0415C**..... 10/31/12

SECRETARY OF STATE[721]

Election forms and instructions, 21.203(8), 21.303, 21.320 Notice of Termination **ARC 0424C**..... 10/31/12

Special elections to fill a vacancy in the office of representative in Congress, 21.405

Notice of Termination **ARC 0425C**..... 10/31/12

Unisyn OpenElect voting system, 22.42, 22.260, 22.264, 22.265 Notice of Termination **ARC 0426C**..... 10/31/12

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Iowa communications network—organizational structure, certified user, notices and minutes

of meetings, 1.5, 9.1, 15.3(3) Filed **ARC 0409C**..... 10/17/12

VOTER REGISTRATION COMMISSION[821]

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ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

Senator Merlin Bartz
2081 410th Street
Grafton, Iowa 50440

Senator Thomas Courtney
2609 Clearview
Burlington, Iowa 52601

Senator Wally Horn
101 Stoney Point Road, SW
Cedar Rapids, Iowa 52404

Senator John P. Kibbie
P.O. Box 190
Emmetsburg, Iowa 50536

Senator James Seymour
901 White Street
Woodbine, Iowa 51579

Joseph A. Royce
Legal Counsel
Capitol
Des Moines, Iowa 50319
Telephone (515)281-3084
Fax (515)281-8451

Representative David Heaton
510 East Washington Street
Mt. Pleasant, Iowa 52641

Representative Jo Oldson
4004 Grand Avenue, #302
Des Moines, Iowa 50312

Representative Rick Olson
3012 East 31st Court
Des Moines, Iowa 50317

Representative Dawn Pettengill
P.O. Box A
Mt. Auburn, Iowa 52313

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

Brenna Findley
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone (515)281-5211

CREDIT UNION DIVISION[189]

Voting procedures,
amend ch 3; adopt ch 12;
rescind chs 16, 19
IAB 10/31/12 **ARC 0428C**

Conference Room, Division Office
200 East Grand Ave.
Des Moines, Iowa

November 20, 2012
1 p.m.

LABOR SERVICES DIVISION[645]

Conveyance safety program—
operating without a permit,
71.7(1)
IAB 10/31/12 **ARC 0411C**

Capitol View Room
1000 East Grand Ave.
Des Moines, Iowa

November 21, 2012
9 a.m.
(If requested)

PROFESSIONAL LICENSURE DIVISION[645]

Cosmetology,
61.12, 61.13, 61.15
IAB 10/31/12 **ARC 0437C**

Fifth Floor Board Conference Room
Lucas State Office Bldg.
Des Moines, Iowa

November 20, 2012
9 to 9:30 a.m.

The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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ARC 0422C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 203.2, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 91, “Licensed Grain Dealers,” Iowa Administrative Code.

The proposed amendment would allow licensed grain dealers to provide a list of canceled credit-sale contracts to examiners as an alternative to placing the cancellation information on the individual paper contracts. This change will accommodate the electronic storage of the contract documents.

Any interested persons may make written suggestions or comments on the proposed amendment on or before November 20, 2012. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

The proposed amendment is subject to the Department’s general waiver provisions.

After analysis and review of this rule making, no adverse impact on jobs has been found.

This amendment is intended to implement Iowa Code section 203.2.

The following amendment is proposed.

Amend paragraph **91.11(8)“a”** as follows:

a. One copy of ~~the each~~ canceled credit-sale contract shall be maintained in separate numerical order from the outstanding credit-sale contracts as part of the records. The grain dealer shall either mark the face of the credit-sale contract with the word “Canceled,” the check number, and date of payment or shall provide a numerically ordered listing that shows the contract numbers, check numbers and payment dates. Credit-sale contracts may only be marked “void” if errors are made on the day of issue; otherwise they are to be considered “canceled.”

ARC 0428C

CREDIT UNION DIVISION[189]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 533.107, the Credit Union Division hereby gives Notice of Intended Action to amend Chapter 3, “Conversion of an Iowa-Chartered Credit Union to Another Charter Type”; to rescind Chapter 12, “Bylaw Amendment Voting Procedure—Mailed Ballot,” and to adopt a new Chapter 12, “Votes of the Membership”; and to rescind Chapter 16, “Director Election—Absentee Ballot Voting Procedure,” and Chapter 19, “Amend, Modify or Reverse Acts of the Board of Directors—Mailed Ballot Voting Procedure,” Iowa Administrative Code.

These provisions detail certain voting procedures for specific types of credit union membership votes and are being amended and consolidated to reflect the recent change in Iowa Code section 533.203 that

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permits the use of multiple methods of voting by credit unions. The statutory changes are reflected in an amended Chapter 3 and a new Chapter 12.

The Division will fully consider any written suggestions or comments on these proposed amendments by any interested person on or before November 20, 2012. Written material should be directed to the Iowa Credit Union Division, 200 E. Grand, Suite 370, Des Moines, Iowa 50309-1827; fax (515)725-0519.

There will be a public hearing on November 20, 2012, at 1 p.m. in the conference room in the Division's offices at 200 E. Grand, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the proposed amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

The proposed amendments do not contain conditions for waiver but would be subject to the process outlined in Chapter 23, "Uniform Waiver and Variance Rules."

After analysis and review of this rule making, the Division has determined that there will be no impact on jobs and no fiscal impact to the state. This rule making replaces rules detailing procedures for some types of voting by the membership in a credit union with a comprehensive set of procedures for all types of credit union membership votes conducted by credit unions.

These amendments are intended to implement Iowa Code sections 533.201(7), 533.201(8), 533.203, 533.208(3), 533.401(1), 533.401(3), 533.403(1), 533.405(1), 533.405(2), and 533.405(6) and 2012 Iowa Acts, Senate File 2279.

The following amendments are proposed.

ITEM 1. Amend subrule 3.2(3) as follows:

3.2(3) Disclosure to members.

a. No credit union shall convert to a federal credit union without full disclosure to its members of the intents and purposes of conversion.

b. If the intent to undertake a second conversion to a mutual savings bank or a savings association is among the purposes for conversion to a federal credit union, those facts and all related information shall be fully disclosed to members.

c. If a further conversion to a stock institution is among the possible outcomes from the conversion, the converting Iowa-chartered credit union ~~must~~ shall fully and accurately disclose this possibility to its members.

ITEM 2. Amend subrules 3.3(1) to 3.3(4) as follows:

3.3(1) Any conversion proposal may be approved by the board of directors only upon the affirmative vote of a majority of the board. The board ~~must~~ shall then set a date for a vote on the proposal by the members of the credit union and select the method of voting by a favorable vote of a majority of the board, according to the provisions of Iowa Code section 533.203 as amended by 2012 Iowa Acts, Senate File 2279, section 5.

3.3(2) The membership ~~must~~ shall approve the proposal to convert by the affirmative vote of a majority of those members who vote on such proposal. Each eligible member shall have one vote regarding the conversion proposal.

3.3(3) The vote of the members to convert ~~must be at a special meeting called for that purpose, must shall~~ be in the manner prescribed in the bylaws and this chapter, and ~~must satisfy the number of members necessary to constitute a quorum to convene a meeting of the members as prescribed in the bylaws.~~

3.3(4) The board of directors ~~must~~ shall notify the superintendent of any proposed conversion ~~and within three days of an affirmative vote by the board on a conversion proposal.~~ The board shall also notify the superintendent of any abandonment or disapproval of the conversion by the members or by the recipient chartering authority, the National Credit Union Administration, or applicable federal deposit insurer within seven days of a membership vote to abandon or disapprove the conversion, receipt of disapproval by a chartering authority, or other decision to abandon the conversion.

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ITEM 3. Rescind rule 189—3.4(533) and adopt the following new rule in lieu thereof:

189—3.4(533) Notice to members and voting procedures.

3.4(1) Requirements. All conversion plans shall be submitted to the superintendent in accordance with 189—3.5(533). The members may not vote on the proposal until the credit union has received preliminary approval from the superintendent under 189—3.5(533), as well as the preliminary determination from the National Credit Union Administration on the proposition for conversion.

3.4(2) Vote by board of directors. The board of directors shall, by majority vote, select the method of voting for the membership vote on the conversion proposal in accordance with Iowa Code section 533.203 as amended by 2012 Iowa Acts, Senate File 2279, section 5.

3.4(3) Election committee. The board shall appoint an election committee of not fewer than seven members, none of whom may be from the board of directors or be a member of a director's immediate family or be an employee of the credit union or a member of an employee's immediate family.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203 as amended by 2012 Iowa Acts, Senate File 2279, section 5.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they are registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

3.4(4) Notice of balloting. The secretary shall set forth the conversion issue in a notice mailed to all members eligible to vote at least 90 calendar days, 60 calendar days, and 30 calendar days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate, in bold-faced type, that members have the right to vote on the proposed amendment through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

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- b.* The notice shall do all of the following:
- (1) Adequately describe the purpose and the subject matter of the vote.
 - (2) Accurately disclose the reasons for the conversion, stated in specific terms and not as generalities. If a purpose of conversion is to become a mutual savings bank, a savings association that is in mutual form, or a stock institution, the notice shall clearly inform the member of all of the following:
 1. That the conversion, if approved, could lead to members' losing their ownership interest in the credit union.
 2. That a credit union member has no more than one vote regardless of the number of shares held, but that in a mutual savings bank or savings association, voting may be based on the amount in the member's deposit accounts, commonly one vote granted for each \$100 on deposit.
 3. That if the mutual savings bank or association converts to a stock institution, members will lose their ownership interests and voting rights automatically received as a member.
 4. The method that will be used to provide for a pro-rata distribution of all unencumbered credit union retained and undivided earnings in excess of regulatory required reserves, as calculated pursuant to Iowa Code section 533.303, or in excess of a well-capitalized net worth level, calculated pursuant to the Federal Credit Union Act, 12 U.S.C. §1790d, whichever amount is greater. The pro-rata distribution shall occur on all shares of record as of the date of first notice to members under this rule and shall be based upon the member's share balance less any amount pledged to share-secured loans.
 - (3) Specify the costs of the conversion, such as changing the credit union name, examination and operating fees, attorney and consulting fees, tax liability, and any change or increase in compensation or economic benefit to directors or senior management officials, pursuant to subrule 3.10(2).
 - (4) Include an affirmative statement that, at the time of conversion to a federal credit union and for a period of five years thereafter, the credit union does or does not intend to do each of the following:
 1. Convert to a mutual savings bank or savings association or a stock institution.
 2. Provide any compensation to previously uncompensated members of the board of directors, or increase compensation or other conversion-related economic benefit, including stock options, special prices on stock, or first rights of refusal, to directors, senior management officials, or their agents, brokers, family members or other closely related parties.
 3. Base member voting rights on account balances.
- c.* The notice shall not be included as part of any general mailing to members.
- d.* The notice may be sent electronically to those members who have opted to receive notices electronically.
- e.* The notice shall be posted in each credit union office 90 calendar days, 60 calendar days, and 30 calendar days before the close of balloting.
- f.* A member who joins the credit union subsequent to the 30-calendar-day notice and prior to the close of balloting and who is eligible to vote on the conversion shall be provided a copy of the 30-calendar-day notice and any balloting materials.
- 3.4(5) Mailed ballots.** If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:
- a.* The secretary shall include the following balloting materials with the 30-calendar-day notice of balloting:
 - (1) One ballot, clearly identified as the ballot.
 - (2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.
 - (3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.
 - (4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall have postage prepaid and be preaddressed for return to the election committee.
 - b.* If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

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c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting.

3.4(6) *Electronic voting.* If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting an instruction sheet with specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. The secretary shall also include a mail-in ballot, and the instructions shall state that members without the requisite electronic device to vote electronically may vote by submitting the enclosed mail-in ballot and shall specify the date the mail-in ballot must be received by the credit union. If the board voted to conduct the vote in part by mailed ballot, the balloting materials required by paragraph 3.4(5) "a" shall satisfy this requirement. If the board did not elect to conduct the vote in part by mailed ballot, this requirement is satisfied by sending the balloting materials required by paragraph 3.4(5) "a."

c. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically, and a mail-in ballot, and related envelopes, and identification form are not required.

d. The electronic voting and any mailed ballots shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting.

3.4(7) *Absentee ballots—subsequent in-person vote at meeting.* If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 3.4(5) "a" to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

3.4(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee

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shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

3.4(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by 189—subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

3.4(10) *Certification of vote by board of directors.* The board of directors shall certify to the superintendent the results of the membership vote and the written materials provided to members according to the requirements of 189—3.6(533).

3.4(11) *Publication of results.* The board shall inform the membership of the results of the vote, and of the superintendent's approval or disapproval, by conspicuously posting notice in each credit union office for a period of 60 days following receipt of the superintendent's decision under 189—3.7(533). In addition to posting the results in each credit union office, the board shall also communicate the results to the membership by at least one of the following methods:

- a. Include the results in the next mailing of the member's statement of account.
- b. Include the results in the credit union newsletter.
- c. Include the results in the sponsor's newsletter.
- d. Post a notice on the credit union's Web site.
- e. Place a notice in a newspaper of general circulation within the geographic area of operation of the credit union.

3.4(12) *Effective date of conversion.* The board shall notify the superintendent of the effective date of the conversion and shall file evidence of federal regulatory approval for the conversion pursuant to 189—3.9(533).

3.4(13) *Certificate of conversion.* Upon receipt of the certificate of conversion from the superintendent, the credit union shall file the certificate pursuant to 189—3.9(533).

3.4(14) *Termination of conversion proceedings.* At any time prior to completion of a conversion to a federal credit union, the board or the members as provided in the bylaws may call for a special meeting of the members to be held to terminate the conversion proceedings. The membership shall approve the proposal to terminate the conversion proceedings by the affirmative vote of a majority of those members who vote on the proposal.

ITEM 4. Amend subrules 3.5(1) to 3.5(3) as follows:

3.5(1) The credit union ~~must~~ shall provide the superintendent with notice of its intent to convert and a plan of conversion no less than 30 calendar days prior to the 90-calendar-day period preceding the ~~date of the membership vote on the conversion~~ close of balloting under 189—3.4(533).

3.5(2) The credit union ~~must~~ shall give notice to the superintendent and provide a plan of conversion describing the material features of the conversion, along with a copy of the filing the credit union has made with the federal regulatory agency by which the credit union seeks that agency's approval of the conversion. The credit union ~~must~~ shall include with the notice to the superintendent a copy of the notice the credit union ~~provides~~ proposes to provide to members under 189—3.4(533), as well as the proposed ballot form and related instructions and envelopes, and all written materials the credit union has distributed or intends to distribute to its members, ~~a copy of the return envelope addressed to the election committee marked "ballot" provided with the ballot form~~, and the procedures the election committee will follow in its receipt and counting of the ballots.

3.5(3) *Superintendent's preliminary determination.*

a. The superintendent ~~will~~ shall make a preliminary determination regarding the methods and procedures applicable to the membership vote.

b. The superintendent ~~will~~ shall notify the credit union within 30 calendar days of receipt of the credit union's notice of intent to convert if the superintendent disapproves of the proposed methods and procedures applicable to the membership vote.

c. The credit union's submission of the notice of intent and plan of conversion does not relieve the credit union of its obligation to certify the results of the membership vote required by 189—3.6(533) or certify compliance with these rules as required by 189—3.3(533) or eliminate the right of the

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superintendent to disapprove the actual methods and procedures applicable to the membership vote if the credit union fails to conduct the membership vote in a fair and legal manner.

ITEM 5. Amend rule 189—3.6(533) as follows:

189—3.6(533) Certification of vote on conversion proposal.

3.6(1) The board of directors of the converting credit union ~~must~~ shall certify the results of the membership vote to the superintendent within ten calendar days after the vote is taken.

3.6(2) The board of directors ~~must~~ shall also certify at the same time that the notice, ballot and other written materials provided to members were identical to those submitted pursuant to 189—3.5(533) or provide copies of any new or revised materials and an explanation of the reasons for the changes.

ITEM 6. Amend subrule 3.7(1) as follows:

3.7(1) The superintendent ~~will~~ shall issue a determination that the methods and procedures applicable to the membership vote are approved or disapproved within ten calendar days of receipt from the credit union of the certification of the result of the membership vote required under 189—3.6(533).

ITEM 7. Amend subrules 3.9(2) to 3.9(6) as follows:

3.9(2) Submission of evidence of approval and effective date.

a. The board of directors of the credit union ~~must~~ shall file with the superintendent appropriate evidence of approval of the conversion by the appropriate federal agency having jurisdiction over the financial institution after conversion and from the federal agency providing deposit insurance to the converted financial institution, and, if applicable, a copy of the notice from the National Credit Union Administration canceling the credit union insurance certificate.

b. The board of directors of the credit union ~~must~~ shall also notify the superintendent of the actual date on which the conversion is to be effective.

3.9(3) Upon receipt of satisfactory proof that the Iowa-chartered credit union has complied with all applicable laws and regulations of this state and of the United States, the superintendent ~~will~~ shall cancel the charter of the credit union and issue a certificate of conversion ~~which must~~ that shall be filed and recorded in the county in which the credit union has its principal place of business and in the county in which its original articles of incorporation or certification of organization ~~were~~ was filed and recorded, if different.

3.9(4) Violations of law or intent to deceive or mislead.

a. In the event it is subsequently determined the conversion was accomplished contrary to applicable law, regulation or the requirements of this chapter, in whole or in part, or with the intent to deceive or mislead the members of the credit union or the superintendent, the superintendent ~~will~~ shall take immediate action to cause the conversion to be declared null and void, and to request from the appropriate regulatory authority that the converted institution be ordered to surrender its charter and be ~~thereupon~~ returned to the authority of the superintendent for reinstatement as a state charter, or other action.

b. The provisions of Iowa Code chapter 533 shall apply in the event it is determined that any director, officer, agent, employee or clerk of the credit union knowingly submitted, or made or exhibited false statements, papers or reports to the superintendent ~~or committed~~.

c. If during the conversion process any person commits any acts which might result in that person's being found to have engaged in act constituting a fraudulent practice under Iowa Code section 714.8, the matter shall be referred to the attorney general.

3.9(5) If the superintendent finds a material deviation from the provisions of this chapter, or from Iowa Code chapter 533, that would invalidate any steps taken in the conversion, the superintendent ~~will~~ shall promptly notify the credit union and the National Credit Union Administration of the nature of the adverse findings.

3.9(6) The conversion of the Iowa credit union to a federal credit union ~~will~~ shall not be effective and completed until final approval is given by the superintendent, any improper actions are cured, and corrective steps have been accomplished, if applicable.

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ITEM 8. Amend rule 189—3.10(533) as follows:

189—3.10(533) Limit on compensation of officials.

3.10(1) No director or senior management official of an Iowa credit union ~~may~~ shall receive any economic benefit in connection with a plan of conversion or the actual conversion of the credit union, other than regular compensation and other usual benefits paid to directors or senior management officials in the ordinary course of business.

3.10(2) In connection with the notices to members required by this chapter, the converting credit union ~~must~~ shall disclose to the members the cost of the conversion, including any change or increase in compensation or economic benefit to directors or senior management officials of the credit union in the event the conversion process is accomplished.

ITEM 9. Amend **189—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 533.203 and 533.403 as amended by 2012 Iowa Acts, Senate File 2279.

ITEM 10. Rescind 189—Chapter 12 and adopt the following new chapter in lieu thereof:

CHAPTER 12
VOTES OF THE MEMBERSHIP

189—12.1(533) Voting requirements and eligibility.

12.1(1) All elections are determined by plurality vote.

12.1(2) A member shall have one vote regardless of the number of or class of shares held by the member. Jointly held ownership shares are entitled to one vote, and joint tenants shall not be permitted to cast more than one vote per ownership share jointly held.

12.1(3) Members shall not vote by proxy.

12.1(4) A member other than a natural person may cast a single vote through a delegated agent.

12.1(5) Members shall be at least 16 years of age by the date of the meeting in order to vote, sign nominating petitions, or sign petitions requesting special meetings.

12.1(6) Members shall be at least 18 years of age by the date of the meeting where the election or appointment will occur in order to hold an elected or appointed position.

189—12.2(533) Nomination procedures for the board of directors.

12.2(1) *Nominating committee.* If the board has determined that voting for directors at the annual meeting will be conducted via one or more methods other than only in-person voting at the meeting, then at least 120 days before each annual meeting, the chairperson of the board shall appoint a nominating committee of three or more members, none of whom are directors currently eligible for reelection or their immediate family members.

a. It is the duty of the nominating committee to nominate at least one member for each vacancy, including for any unexpired-term vacancy, for which elections are being held and to obtain a signed certificate from the members nominated that they are agreeable to the placing of their names in nomination, will accept office if elected, and will cooperate with any background check required by the credit union.

b. The nominating committee shall file its nominations with the secretary of the credit union board at least 90 days before the annual meeting.

12.2(2) *Nominations by petition.* Upon majority vote, the board of directors may decide to accept additional nominations by petition, instead of taking nominations from the floor at the annual meeting.

a. At least 90 days before the annual meeting, the secretary shall notify in writing all members eligible to vote that nominations for vacancies may be made by petition signed by at least 1 percent of the members, subject to a minimum of 20 members and a maximum of 200 members.

(1) The notice shall indicate that there will be no nominations from the floor at the annual meeting.

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(2) The notice shall include a list of the nominating committee's nominees and a brief statement of the nominees' qualifications and biographical data in a form approved by the board of directors. Each nominee by petition shall submit a similar statement of qualifications and biographical data with the petition.

(3) Nominations by petition shall be accompanied by a signed certificate from the nominee stating that the nominee is agreeable to nomination, will serve if elected to office, and will cooperate with any background check required by the credit union.

(4) The period for receiving nominations by petition shall extend at least 30 days from the date that the notice is sent. Petitions shall be filed with the secretary of the credit union at least 60 days before the annual meeting.

(5) Nominations by petition which are received after the closing date, or which are otherwise incomplete because they do not include a statement of qualifications and biographical data, or certification agreeing to the nomination and indicating a willingness to serve, shall be disqualified by the board secretary. The secretary shall immediately notify the nominee of the disqualification and of the reason. A petition for a disqualified nominee may be refiled provided that all requirements, including the closing date for receiving nominations by petition, are met.

b. The notice shall not be included as part of any general mailing to members, but may be included with the notice of annual meeting.

c. The secretary may use electronic mail to notify members who have opted to receive notices or statements electronically.

12.2(3) *Posting of nominations.* The secretary shall ensure that all nominations are posted in a conspicuous place in each credit union office at least 30 days but no more than 60 days before the annual meeting.

12.2(4) *Alternative schedule—voting only in person at annual meeting.* If the board of directors determines that voting at the annual meeting shall only be conducted in person, and nominations will be taken from the floor at the annual meeting, the chairperson of the board shall appoint a nominating committee of three or more members, none of whom are directors currently eligible for reelection or their immediate family members, at least 60 days before the annual meeting. Nominations shall be posted according to subrule 12.2(3).

189—12.3(533) Election procedures for the board of directors.

12.3(1) *Election committee.* The board of directors shall appoint an election committee of not fewer than five members, none of whom may be a current director or nominee for office or an immediate family member of any director or nominee for office.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. The chairperson of the election committee shall announce the results of the election at the annual meeting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203 as amended by 2012 Iowa Acts, Senate File 2279, section 5.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they are registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of

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safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.3(2) Notice of balloting. At least 20 days but not more than 30 days prior to the close of balloting, the secretary shall cause a notice of balloting to be mailed to all members eligible to vote.

a. The notice of balloting shall state the names of the candidates for the board of directors. The name of each candidate shall be followed by a brief statement of the candidate's qualifications and biographical data in a form approved by the board of directors.

b. If the board of directors elected to accept additional nominations by petition, then the notice of balloting shall state that additional nominations shall not be taken from the floor at the annual meeting. In this event, the board may vote to conduct the election in any form permitted by Iowa Code section 533.203 as amended by 2012 Iowa Acts, Senate File 2279, section 5.

c. If the board of directors did not elect to accept additional nominations by petition, then the notice of balloting shall state that additional nominations will be taken from the floor at the annual meeting. In this event, the board may only vote to conduct the election in person at the annual meeting, and not by mail-in ballot, electronic voting, absentee voting, or any combination permitted by Iowa Code section 533.203 as amended by 2012 Iowa Acts, Senate File 2279, section 5.

d. The notice shall set forth the rules and procedures for voting and the date of the close of balloting.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

e. The notice shall not be included as part of any general mailing to members, but may be included with the notice of annual meeting.

f. Electronic mail may be used to provide the notice of balloting to members who have opted to receive notices or statements electronically.

12.3(3) Mailed ballots. If the board of directors, by majority vote, has elected to conduct the election in whole or in part by mailed ballot, then the secretary shall send with the notice of balloting a mail-in ballot.

a. The secretary shall include the following materials for balloting:

(1) One ballot, clearly identified as the ballot, on which the names of the candidates for the board of directors are printed in random order.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall have postage prepaid and be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

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d. If voting will also occur at the annual meeting, the ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the annual meeting. If voting is not scheduled to occur at the annual meeting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the close of balloting.

12.3(4) *Electronic voting.* If the board of directors, by majority vote, has elected to conduct the election in whole or in part by electronic voting, then the secretary shall include with the notice of balloting a mail-in ballot and an instruction sheet with specific instructions for electronic voting.

a. The instruction sheet for electronic voting shall contain specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. The instructions shall state that members without the requisite electronic device to vote electronically may vote by submitting the enclosed mail-in ballot.

c. If the board voted to conduct the vote in part by mailed ballot, the requirement of inclusion of a mail-in ballot is satisfied by the balloting materials required by paragraph 12.3(3) "*a.*" If the board did not elect to conduct the vote in part by mailed ballot, the requirement of inclusion of a mail-in ballot is satisfied by sending the balloting materials required by paragraph 12.3(3) "*a.*"

d. For those members who have opted to receive notices or statements electronically, the instructions for electronic voting required under this subrule may be communicated electronically, and a mail-in ballot, and related envelopes, and identification form are not required.

e. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee. If voting will also occur at the annual meeting, then the tallies shall be placed in the ballot boxes and the ballot boxes resealed to be taken to the meeting.

f. The electronic voting shall be tallied by the election committee. If voting will also occur at the annual meeting, then the results shall be verified at the meeting.

g. If voting is not scheduled to occur at the annual meeting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the close of balloting.

12.3(5) *Absentee ballots—subsequent in-person vote at meeting.* If the board of directors, by majority vote, has elected to conduct the election only in person at the annual meeting, the board may also, by majority vote, utilize absentee ballots when no additional nominations will be taken from the floor at the annual meeting and when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of annual meeting a notification that members may vote either in person at the annual meeting or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 12.3(3) "*a.*" to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the annual meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.3(6) *Nominations from the floor—subsequent in-person vote at meeting.* If the board of directors did not elect to accept additional nominations by petition, then additional nominations shall be taken from the floor at the annual meeting, provided that no electronic, mail-in, or absentee balloting has occurred.

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a. At the annual meeting, printed ballots shall be distributed to those in attendance after additional nominations are taken from the floor, or the ballots shall also have blank spaces to write in the additional names. The ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting.

b. After members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee.

c. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the annual meeting.

12.3(7) *In-person vote at meeting.* If the board of directors elected to accept additional nominations by petition, and if the board of directors also chose to conduct the vote in part by in-person voting at the annual meeting, printed ballots shall be distributed to those in attendance at the annual meeting who have not voted.

a. The ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting.

b. After those members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots.

c. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the annual meeting.

12.3(8) *Preservation of ballots.* Ballots shall be preserved according to the provisions of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.3(9) *Publication of results.* Results of the election shall be reported to members according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.4(533) Vote to amend bylaws or articles of incorporation.

12.4(1) *Requirements.* Voting on amendments of bylaws and articles of incorporation shall be conducted in accordance with Iowa Code section 533.201 as amended by 2012 Iowa Acts, Senate File 2279, section 4. All amendments shall be approved by the superintendent before the amendments become effective.

12.4(2) *Vote by board of directors.* If the board of directors has elected upon a favorable vote of the majority that the board of directors shall vote on the amendment, then the amendment is adopted by a favorable vote of the majority of the board.

12.4(3) *Election committee.* If the board of directors votes to conduct the vote on the amendment by a method other than a majority vote of the board of directors, as provided in Iowa Code section 533.201 as amended by 2012 Iowa Acts, Senate File 2279, section 4, then the board shall appoint an election committee of not fewer than five members, none of whom may be directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. The chairperson of the election committee shall announce the results of the vote at the annual meeting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.201 as amended by 2012 Iowa Acts, Senate File 2279, section 4.

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e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they are registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.4(4) Notice of balloting. The secretary shall set forth the proposed amendment in its entirety in a notice mailed to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting. The notice shall also contain a summary of the board's reasons for recommending the amendment.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed amendment through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice shall not be included as part of any general mailing to members.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.4(5) Mailed ballots. If the board of directors has elected, upon a favorable vote of the majority, to conduct a vote on the proposed amendment in whole or in part via mailed ballot:

a. The secretary shall include the following materials for balloting with the mailed notice of balloting:

(1) One ballot, clearly identified as the ballot, on which the proposed amendment is printed in full.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall have postage prepaid and be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If voting is not scheduled to occur at a meeting, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting.

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12.4(6) *Electronic voting.* If the board of directors, by majority vote, has elected to conduct the vote in whole or in part by electronic voting, then the secretary shall send a mail-in ballot and an instruction sheet with specific instructions for electronic voting to each member eligible to vote.

a. The instruction sheet for electronic voting shall contain specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. The instructions shall state that members without the requisite electronic device to vote electronically may vote by submitting the enclosed mail-in ballot.

c. If the board voted to conduct the vote in part by mailed ballot, the requirement of inclusion of a mail-in ballot is satisfied by the balloting materials required by paragraph 12.4(5) "*a.*" If the board did not elect to conduct the vote in part by mailed ballot, the requirement of inclusion of a mail-in ballot is satisfied by sending the balloting materials required by paragraph 12.4(5) "*a.*"

d. For those members who have opted to receive notices or statements electronically, the instructions and notice required under this subrule may be communicated electronically, and a mail-in ballot, and related envelopes, and identification form are not required.

e. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee. If voting will also occur at a meeting, then the tallies shall be placed in the ballot boxes and the ballot boxes resealed to be taken to the meeting.

f. The electronic voting shall be tallied by the election committee. If voting will also occur at a meeting, then the results shall be verified at the meeting.

g. If voting is not scheduled to occur at a meeting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.4(7) *Absentee ballots—subsequent in-person vote at meeting.* If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 12.4(5) "*a.*" to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.4(8) *In-person voting at meeting.* If the board of directors has elected, upon a favorable vote of the majority, to present the proposed amendment for a vote in part at a meeting of members, printed ballots shall be given at the meeting to those members who have not voted by another method.

a. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting.

b. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots.

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c. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.4(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date of final approval or denial of the amendment by the superintendent.

12.4(10) *Submission to superintendent.* The board of directors shall submit the amendment to the superintendent for approval before the amendment becomes effective. The board shall submit the following documentation in support of its request for approval:

a. A certified copy of the board minutes which contain the recommendation to submit the amendment to a vote of the membership.

b. A certified copy of the notices provided to members.

c. A certified copy of any ballots provided to members.

d. A certified statement, including the vote count, that a majority of the eligible members voted in favor of the proposed amendment.

12.4(11) *Publication of results.* The board shall inform the membership of the results of the vote and whether the amendment received the approval of the superintendent, according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) period shall run from the date of final approval or denial of the amendment by the superintendent.

189—12.5(533) *Vote to modify, amend, or reverse an act of the board of directors or to instruct the board to take action.*

12.5(1) *Vote of members at meeting.* The majority of members present at any meeting may vote to modify, amend, or reverse any act of the board of directors or instruct the board to take action not inconsistent with the articles of incorporation, the bylaws, or the Iowa credit union Act or administrative rules.

12.5(2) *Subsequent vote of membership.* In order to be binding upon the board of directors, any action taken by the membership to modify, amend, or reverse an act of the board, or to instruct the board to take action, requires an affirmative vote of a majority of all eligible members obtained by submitting the modification, amendment, reversal, or instruction to the members for a vote.

a. After a majority of members present at a meeting have voted to modify, amend, or reverse any act of the board of directors, or to instruct the board to take action not inconsistent with the articles, the bylaws, or the Iowa credit union Act or administrative rules, the board of directors shall meet to determine the method of voting for the membership vote and shall, within 60 days of the date of the meeting where the majority of members voted to modify, amend, or reverse an act of the board of directors, or to instruct the board to take action, submit the issue to all eligible voters of record as of the date of the meeting.

b. If a simple majority of all eligible members vote in favor of the amendment, modification, reversal or instruction to take action, the vote of the members taken at the annual or special meeting shall be considered affirmed, and the board of directors shall take immediate action to comply with the directions of the membership. However, if a simple majority of all eligible members failed to vote in favor of the amendment, modification, reversal or instruction to take action, the vote of the members taken at the annual or special meeting is not affirmed, and the prior action of the board of directors shall be considered upheld.

12.5(3) *Election committee.* The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

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c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203 as amended by 2012 Iowa Acts, Senate File 2279, section 5.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they are registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.5(4) Notice of balloting. The secretary shall set forth the proposed amendment, modification, reversal or instruction to take action in its entirety in a notice mailed to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting. The notice shall also contain a summary of the board's reasons for its action or inaction, as well as a summary of the reasons, if known, for the vote to amend, modify, or reverse the board action, or to instruct the board to take action.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice shall not be included as part of any general mailing to members.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.5(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the mailed notice of balloting:

(1) One ballot, clearly identified as the ballot, on which the proposed amendment, modification, or reversal, or instruction to the board to take action, is printed in full.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall have postage prepaid and be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

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c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.5(6) *Electronic voting.* If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting an instruction sheet with specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. The secretary shall also include a mail-in ballot, and the instructions shall state that members without the requisite electronic device to vote electronically may vote by submitting the enclosed mail-in ballot and shall specify the date the mail-in ballot must be received by the credit union. If the board voted to conduct the vote in part by mailed ballot, the balloting materials required by paragraph 12.5(5) "a" shall satisfy this requirement. If the board did not elect to conduct the vote in part by mailed ballot, this requirement is satisfied by sending the balloting materials required by paragraph 12.5(5) "a."

c. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically, and a mail-in ballot, and related envelopes, and identification form are not required.

d. The electronic voting and any mailed ballots shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.5(7) *Absentee ballots—subsequent in-person vote at meeting.* If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 12.5(5) "a" to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.5(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in part at a meeting of members, then printed ballots on which the proposed amendment, modification, or reversal, or instruction to the board to take action, is printed in full shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots.

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The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.5(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.5(10) *Publication of results.* The board shall inform the membership of the results of the vote according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.6(533) *Vote on merger.*

12.6(1) *Vote by board of directors.* A state credit union that seeks to merge with another credit union shall proceed pursuant to a plan agreed upon by a favorable vote of a majority of directors.

12.6(2) *Subsequent vote of the membership.* Following a vote by the board of directors to merge with another credit union, the board shall submit the merger to a vote of the membership of the merging credit union unless the superintendent finds that an emergency exists justifying the waiver of the membership vote. The board of the continuing credit union shall, within three days of voting to merge, notify the superintendent of the merger vote. After the superintendent has given preliminary approval to the merger, the board of the merging credit union shall submit the issue within 30 days to all eligible voters of record as of the date of the vote by the board of directors. The approval of the merger is not final until approved by the superintendent after the membership vote of the merging credit union.

12.6(3) *Election committee.* The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the vote at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203 as amended by 2012 Iowa Acts, Senate File 2279, section 5.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they are registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.6(4) *Notice of balloting.* The secretary shall set forth the proposed merger in a notice mailed to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting. The notice shall also contain a summary of the board's reasons for voting to merge.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

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(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed merger through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice shall not be included as part of any general mailing to members.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.6(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the mailed notice of balloting:

(1) One ballot, clearly identified as the ballot.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall have postage prepaid and be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.6(6) Electronic voting. If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting an instruction sheet with specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. The secretary shall also include a mail-in ballot, and the instructions shall state that members without the requisite electronic device to vote electronically may vote by submitting the enclosed mail-in ballot and shall specify the date the mail-in ballot must be received by the credit union. If the board voted to conduct the vote in part by mailed ballot, the balloting materials required by paragraph 12.6(5) "a" shall satisfy this requirement. If the board did not elect to conduct the vote in part by mailed ballot, this requirement is satisfied by sending the balloting materials required by paragraph 12.6(5) "a."

c. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically, and a mail-in ballot, and related envelopes, and identification form are not required.

d. The electronic voting and any mailed ballots shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting.

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12.6(7) Absentee ballots—subsequent in-person vote at meeting. If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 12.6(5) “a” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.6(8) In-person vote at meeting. If the board voted by majority vote to conduct the vote in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.6(9) Preservation of ballots. Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.6(10) Submission to superintendent. The board of directors shall submit the merger to the superintendent for approval before the merger becomes effective. The board shall submit the following documentation in support of its request for approval:

a. A certified copy of the board minutes which contain the vote of the board of directors to approve the merger and to submit the merger to a vote of the membership.

b. A certified copy of the notices provided to members.

c. A certified copy of any ballots provided to members.

d. A certified statement, including the vote count, that a majority of the eligible members voted in favor of the proposed merger.

12.6(11) Publication of results. The board shall inform the membership of the results of the vote according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.7(533) Vote on voluntary dissolution.

12.7(1) Vote of board of directors. A state credit union that seeks to dissolve shall proceed pursuant to a plan agreed upon by a favorable vote of a majority of directors. Within three days of the vote and prior to sending notice of the membership vote, the board of directors shall notify the superintendent of the intention to dissolve.

12.7(2) Subsequent vote of the membership. Following a vote by the board of directors to dissolve, the board shall submit the dissolution to a vote of the membership. The board shall submit the issue to the membership within 30 days of voting to dissolve. The board shall submit the issue to all eligible

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voters of record as of the date of the vote by the board of directors. The approval of the dissolution is not final until the superintendent issues a certificate of dissolution.

12.7(3) *Election committee.* The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203 as amended by 2012 Iowa Acts, Senate File 2279, section 5.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they are registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.7(4) *Notice of balloting.* The secretary shall set forth the proposed dissolution in a notice mailed to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting. The notice shall also contain a summary of the board's reasons for voting for the voluntary dissolution.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed dissolution through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice shall not be included as part of any general mailing to members.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.7(5) *Mailed ballots.* If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the mailed notice of balloting:

(1) One ballot, clearly identified as the ballot.

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(2) One ballot envelope clearly marked “ballot” with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed “ballot” envelope and the identification form. The mailing envelope shall have postage prepaid and be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.7(6) *Electronic voting.* If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting an instruction sheet with specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. The secretary shall also include a mail-in ballot, and the instructions shall state that members without the requisite electronic device to vote electronically may vote by submitting the enclosed mail-in ballot and shall specify the date the mail-in ballot must be received by the credit union. If the board voted to conduct the vote in part by mailed ballot, the balloting materials required by paragraph 12.7(5) “a” shall satisfy this requirement. If the board did not elect to conduct the vote in part by mailed ballot, this requirement is satisfied by sending the balloting materials required by paragraph 12.7(5) “a.”

c. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically, and a mail-in ballot, and related envelopes, and identification form are not required.

d. The electronic voting and any mailed ballots shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.7(7) *Absentee ballots—subsequent in-person vote at meeting.* If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 12.7(5) “a” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting

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shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.7(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.7(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.7(10) *Submission to superintendent.* The board of directors shall submit the dissolution to the superintendent for review before the dissolution becomes effective. The state credit union shall cease existence when the superintendent issues a certificate of dissolution. The board shall submit the following documentation:

- a. A certified copy of the board minutes which contain the vote of the board of directors to approve the plan and to submit the dissolution to a vote of the membership.
- b. A certified copy of the notices provided to members.
- c. A certified copy of any ballots provided to members.
- d. A certified statement, including the vote count, that a majority of the eligible members voted in favor of the proposed dissolution.
- e. Proof that is satisfactory to the superintendent that all assets have been liquidated from which there is a reasonable expectance of realization, that the liabilities of the state credit union have been discharged and distribution made to its members, and that the liquidation has been completed.
- f. Proof that is satisfactory to the superintendent that sufficient provision has been made for any liability arising under Iowa Code section 533.404(4) “a.”

12.7(11) *Publication of results.* The board shall inform the membership of the results of the vote according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.8(533) *Vote to remove or reinstate an officer, director, or member of the auditing committee.*

12.8(1) *Auditing committee vote.* If the auditing committee deems the action to be necessary to the proper conduct of the state credit union, the auditing committee may suspend, by majority vote, any officer, director, or member of the auditing committee.

12.8(2) *Subsequent vote of membership.*

a. Following a vote by the auditing committee to suspend an officer, director, or member of the auditing committee, the suspension shall be put to a vote of the membership. The members may vote to sustain the suspension and remove the officer, director, or auditing committee member permanently or may vote to reinstate the officer, director, or auditing committee member.

b. The board of directors shall meet to determine the method of voting for the membership vote and shall, within 30 days of the date of the auditing committee’s vote, submit the issue to all eligible voters of record as of the date of the auditing committee’s meeting.

12.8(3) *Election committee.* The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors and none of whom may be from the auditing committee.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

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b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203 as amended by 2012 Iowa Acts, Senate File 2279, section 5.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they are registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.8(4) Notice of balloting. The secretary shall set forth the suspension and proposed removal in a notice mailed to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting. The notice shall also contain a summary of the auditing committee's reasons for voting to suspend the officer, director, or member of the auditing committee, as well as a summary of the reasons, if known, that the officer, director, or member of the auditing committee believes that the officer, director, or member should be reinstated.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed removal through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice shall not be included as part of any general mailing to members.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.8(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the mailed notice of balloting:

(1) One ballot, clearly identified as the ballot.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

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(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall have postage prepaid and be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.8(6) *Electronic voting.* If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting an instruction sheet with specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. The secretary shall also include a mail-in ballot, and the instructions shall state that members without the requisite electronic device to vote electronically may vote by submitting the enclosed mail-in ballot and shall specify the date the mail-in ballot must be received by the credit union. If the board voted to conduct the vote in part by mailed ballot, the balloting materials required by paragraph 12.8(5) "a" shall satisfy this requirement. If the board did not elect to conduct the vote in part by mailed ballot, this requirement is satisfied by sending the balloting materials required by paragraph 12.8(5) "a."

c. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically, and a mail-in ballot, and related envelopes, and identification form are not required.

d. The electronic voting and any mailed ballots shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.8(7) *Absentee ballots—subsequent in-person vote at meeting.* If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 12.8(5) "a" to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

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12.8(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.8(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.8(10) *Publication of results.* The board shall inform the membership of the results of the vote according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.9(533) Preservation of ballots.

12.9(1) Immediately upon certification of the results of the vote by the election committee, any written ballots shall be sealed and appropriately labeled. Electronic vote results shall be saved electronically.

12.9(2) All ballots and voting results shall be retained by the credit union for at least 60 days, and until any disputes are resolved.

189—12.10(533) Reporting the results of the vote to the membership.

12.10(1) *Posting of results.* Except as otherwise provided for a membership vote, the board shall inform the membership of the results of the vote by conspicuously posting notice in each credit union office for a period of 60 days.

12.10(2) *Publication of results.* Except as otherwise provided for a membership vote, in addition to posting the results in each credit union office, the board shall also communicate the results to the membership by at least one of the following methods:

- a. Include the results in the next mailing of the member's statement of account.
- b. Include the results in the credit union newsletter.
- c. Include the results in the sponsor's newsletter.
- d. Post a notice on the credit union's Web site.
- e. Place a notice in a newspaper of general circulation within the geographic area of operation of the credit union.

189—12.11(533) Vote on sale of assets by corporate central credit union.

12.11(1) *Board of directors' vote.* A corporate central credit union that seeks to sell all of its assets to another corporate credit union shall proceed pursuant to a plan agreed upon by a favorable vote of a majority of directors. The board shall notify the superintendent within three days.

12.11(2) *Subsequent vote of the membership.* Following a vote by the board of directors to approve a plan to sell all of the corporate central credit union's assets to another corporate credit union, the board shall submit the plan to a vote of the membership. The board shall submit the issue within 30 days of voting to approve the plan to all eligible voters of record as of the date of the vote by the board of directors. The approval of the sale is not final until approved by the superintendent after the membership vote.

12.11(3) *Election committee.* The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

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b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203 as amended by 2012 Iowa Acts, Senate File 2279, section 5.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they are registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.11(4) Notice of balloting. The secretary shall set forth the proposed sale in a notice mailed to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting. The notice shall also contain a summary of the board's reasons for selling the assets.

(1) The close of balloting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed sale through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice shall not be included as part of any general mailing to members.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.11(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the mailed notice of balloting:

(1) One ballot, clearly identified as the ballot.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall have postage prepaid and be preaddressed for return to the election committee.

CREDIT UNION DIVISION[189](cont'd)

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.11(6) *Electronic voting.* If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting an instruction sheet with specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. The secretary shall also include a mail-in ballot, and the instructions shall state that members without the requisite electronic device to vote electronically may vote by submitting the enclosed mail-in ballot and shall specify the date the mail-in ballot must be received by the credit union. If the board voted to conduct the vote in part by mailed ballot, the balloting materials required by paragraph 12.11(5) "a" shall satisfy this requirement. If the board did not elect to conduct the vote in part by mailed ballot, this requirement is satisfied by sending the balloting materials required by paragraph 12.11(5) "a."

c. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically, and a mail-in ballot, and related envelopes, and identification form are not required.

d. The electronic voting and any mailed ballots shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting.

12.11(7) *Absentee ballots—subsequent in-person vote at meeting.* If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting.

b. The secretary shall mail the balloting materials specified in paragraph 12.11(5) "a" to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.11(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given an opportunity to

CREDIT UNION DIVISION[189](cont'd)

vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.11(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.11(10) *Submission to superintendent.* The board of directors shall submit the plan to the superintendent for approval before the plan to sell all of the assets of the corporate central credit union becomes effective. The board shall submit the following documentation in support of its request for approval:

- a.* A certified copy of the board minutes which contain the vote of the board of directors to approve the plan and to submit the sale to a vote of the membership.
- b.* A certified copy of the notices provided to members.
- c.* A certified copy of any ballots provided to members.
- d.* A certified statement, including the vote count, that a majority of the eligible members voted in favor of the proposed sale.

12.11(11) *Publication of results.* The board shall inform the membership of the results of the vote within ten days of certification of the results of the vote by the election committee. The board shall communicate the results to the membership by at least two of the following methods:

- a.* By mail.
- b.* By e-mail.
- c.* By posting a notice on the corporate central credit union's Web site.

189—12.12(533) *Vote on conversion of an Iowa-chartered credit union to another charter type.* An Iowa-chartered credit union that seeks to convert to another charter type shall comply with the conversion procedures, including a vote of the membership, as provided in 189—Chapter 3.

These rules are intended to implement Iowa Code sections 533.201, 533.203, 533.204, 533.208, 533.213, 533.401, 533.403, and 533.405 and 2012 Iowa Acts, Senate File 2279.

ITEM 11. Rescind and reserve **189—Chapter 16.**

ITEM 12. Rescind and reserve **189—Chapter 19.**

ARC 0432C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

These amendments change the Medicaid for Employed People with Disabilities (MEPD) program eligibility rules so that social security cost-of-living adjustments will be counted only in eligibility and premium determinations based on subsequently published poverty levels.

These amendments also eliminate a cross reference in Chapter 75 to subrule 93.114(1) related to the PROMISE JOBS program. The PROMISE JOBS rules were revised several years ago, and the cross-referenced subrule no longer exists. Consequently, proposed subparagraph 75.53(4)“b”(3) is added

HUMAN SERVICES DEPARTMENT[441](cont'd)

to state the conditions under which the needs of an adult who is temporarily out of the home can be included in the eligible group for purposes of medical assistance for families with children, as previously provided in the PROMISE JOBS rules.

Any interested person may make written comments on the proposed amendments on or before November 20, 2012. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because the amendments confer a benefit and because all Medicaid members should be subject to the same rules regarding the determination of eligibility and premium liability. In addition, all family-related Medicaid members should also be subject to the same rules regarding the determination of the eligible group. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend subrule 75.1(39) as follows:

75.1(39) *Working persons with disabilities.*

a. Medical assistance shall be available to all persons who meet all of the following conditions:

(1) They are disabled as determined pursuant to rule 441—75.20(249A), except that being engaged in substantial gainful activity will not preclude a determination of disability.

(2) They are less than 65 years of age.

(3) They are members of families (including families of one) whose income is less than 250 percent of the most recently revised official federal poverty level for the family. Family income shall include gross income of all family members, less supplemental security income program disregards, exemptions, and exclusions, including the earned income disregards. However, income attributable to a social security cost-of-living adjustment shall be included only in determining eligibility based on a subsequently published federal poverty level.

(4) They receive earned income from employment or self-employment or are eligible under paragraph 75.1(39)“c.”

(5) They would be eligible for medical assistance under another coverage group set out in this rule (other than the medically needy coverage groups at subrule 75.1(35)), disregarding all income, up to \$10,000 of available resources, and any additional resources held by the disabled individual in a retirement account, a medical savings account, or an assistive technology account. For this purpose, disability shall be determined as under subparagraph 75.1(39)“a”(1) above.

(6) They have paid any premium assessed under paragraph 75.1(39)“b” below.

b. Eligibility for a person whose gross income is greater than 150 percent of the federal poverty level for an individual is conditional upon payment of a premium. Gross income includes all earned and unearned income of the conditionally eligible person, except that income attributable to a social security cost-of-living adjustment shall be included only in determining premium liability based on a subsequently published federal poverty level. A monthly premium shall be assessed at the time of application and at the annual review. The premium amounts and the federal poverty level increments above 150 percent of the federal poverty level used to assess premiums will be adjusted annually on August 1.

(1) to (11) No change.

c. and *d.* No change.

ITEM 2. Amend paragraph 75.53(4)“b” as follows:

b. The needs of an individual who is temporarily out of the home are included in the eligible group if otherwise eligible. A temporary absence exists in the following circumstances:

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) An individual is anticipated to be in the medical institution for less than a year, as verified by a physician's statement. Failure to return within one year from the date of entry into the medical institution will result in the individual's needs being removed from the eligible group.

(2) ~~An individual~~ A child is out of the home to secure education or training as defined for children in paragraph 75.54(1) "b" as long as the child remains a dependent and as defined for adults in 441—subrule 93.114(1), first sentence.

(3) A parent or specified relative is temporarily out of the home to secure education or training and was in the eligible group before leaving the home to secure education or training. For this purpose, "education or training" means any academic or vocational training program that prepares a person for a specific professional or vocational area of employment.

~~(3)~~ (4) An individual is out of the home for reasons other than reasons in subparagraphs 75.53(4) "b"(1) and ~~(2)~~ through (3) and intends to return to the home within three months. Failure to return within three months from the date the individual left the home will result in the individual's needs being removed from the eligible group.

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HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1) "b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments bring the Iowa Medicaid program into compliance with Section 6401 of the Affordable Care Act (ACA), which went into effect March 25, 2011. Specifically, the amendments address the new federal requirements that all providers: (1) be screened according to the provider type's risk for fraud, waste, or abuse, and (2) be enrolled as a Medicaid provider to be eligible for Medicaid payments. These changes are required as part of the transparency and program integrity efforts established by, and identified in, the ACA.

The new enrollment procedures will require providers to disclose the identity of those with ownership and controlling interests in the provider's organization as well as the identity of any organization in which the provider may have an ownership or controlling interest.

Providers will be screened according to the requirements of their assigned risk level: limited, moderate, or high. Depending on assigned risk level, providers may undergo a series of certification and licensure checks on national databases, site visits, background checks and fingerprinting.

The changes in the screening and enrollment processes required a contract amendment with the Provider Services Unit of the Iowa Medicaid Enterprise.

Additionally, providers who are not currently required to enroll, including physician assistants and other providers who bill under a facility, will now be able to enroll for the limited purpose of having the prescriptions they write payable to the pharmacy filling those prescriptions.

Any interested person may make written comments on the proposed amendments on or before November 20, 2012. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations because the proposed amendments confer a benefit to a provider type (i.e., physician assistants) not previously able to enroll as a Medicaid provider type. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Adopt the following new rule 441—77.49(249A):

441—77.49(249A) Physician assistants. All physician assistants licensed to practice in the state of Iowa are eligible for limited participation in the program. Physician assistants duly licensed to practice in other states are also eligible for limited participation. However, enrollment is only for the limited purpose of making orders and referrals made by physician assistants eligible for payment by Iowa Medicaid, pursuant to requirements under Public Law 111-148, Section 6401, otherwise known as the Patient Protection Affordable Care Act (PPACA).

This rule is intended to implement Iowa Code section 249A.4.

ITEM 2. Adopt the following new rule 441—77.50(249A):

441—77.50(249A) Ordering and referring providers. A provider who provides services, including orders and referrals, to a Medicaid member shall be enrolled as a Medicaid provider as a condition of payment eligibility for services rendered to that Medicaid member. A provider who does not individually bill for services rendered due to, for example, payment arrangements with a facility or supervising provider, shall enroll with limited participation. Enrollment will be for the limited purpose of ordering or referring items and services to Medicaid members and will not affect the provider's payment arrangements with such facilities or supervising providers.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 3. Amend subrule 78.2(1) as follows:

78.2(1) *Qualified prescriber.* All drugs are covered only if prescribed by a legally qualified practitioner (physician, dentist, podiatrist, optometrist, physician assistant, or advanced registered nurse practitioner). Pursuant to Public Law 111-148, Section 6401, any practitioner prescribing drugs must be enrolled with the Iowa Medicaid enterprise in order for such prescribed drugs to be eligible for payment.

ITEM 4. Amend rule 441—79.14(249A) as follows:

441—79.14(249A) Provider enrollment.

79.14(1) Application request. ~~A provider of medical or remedial services that wishes to enroll as an Iowa Medicaid provider~~ providers other than managed care organizations and Medicaid fiscal agents shall begin the enrollment process by contacting completing the provider services unit at appropriate application on the Iowa Medicaid enterprise Web site. to request an application form.

a. Providers of home- and community-based waiver services shall submit Form 470-2917, Medicaid HCBS Provider Application, at least 90 days before the planned service implementation date.

b. Providers enrolling as ordering or referring providers shall submit Form 470-5011, Iowa Medicaid Ordering/Referring Provider Enrollment Application.

c. All other providers shall submit Form 470-0254, Iowa Medicaid Provider Enrollment Application.

~~a. d.~~ A nursing facility shall also complete the process set forth in 441—subrule 81.13(1).

~~b. e.~~ An intermediate care facility for persons with ~~mental retardation~~ an intellectual disability shall also complete the process set forth in 441—subrule 82.3(1).

79.14(2) Submittal of application. The provider shall submit the appropriate application forms to the Iowa Medicaid enterprise provider services unit at by personal delivery, by e-mail, via online enrollment systems, or by mail to P.O. Box 36450, Des Moines, Iowa 50315.

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~a. Providers of home and community-based waiver services shall submit Form 470-2917, Medicaid HCBS Provider Application, at least 90 days before the planned service implementation date.~~

~~b. All other providers shall submit Form 470-0254, Iowa Medicaid Provider Enrollment Application.~~

~~c. a.~~ The application shall include the provider's national provider identifier number or shall indicate that the provider is an atypical provider that is not issued a national provider identifier number.

~~d. b.~~ With the application form, an assertive community treatment program shall submit Form 470-4842, Assertive Community Services (ACT) Provider Agreement Addendum, and agree to file with the department an annual report containing information to be used for rate setting, including:

(1) Data by practitioner on the utilization by Medicaid members of all the services included in assertive community treatment, and

(2) Cost information by practitioner type and by type of service actually delivered as part of assertive community treatment.

~~e. c.~~ With the application form, or as a supplement to a previously submitted application, providers of health home services shall submit Form 470-5100, Health Home Provider Agreement.

~~79.14(3) Notification. Providers shall be notified of the decision on their application by the Iowa Medicaid enterprise provider services unit within 30 calendar days.~~

79.14(3) Program integrity information requirements.

a. All providers, including but not limited to managed care organizations and Medicaid fiscal agents, applying for participation in the Iowa Medicaid program must disclose all information required to be submitted pursuant to 42 CFR Part 455. In addition, all providers shall disclose any current, or previous, direct or indirect affiliation with a present or former Iowa Medicaid provider that:

(1) Has any uncollected debt owed to Medicaid or any other health care program funded by any governmental entity, including but not limited to the federal and state of Iowa governments;

(2) Has been or is subject to a payment suspension under a federally funded health care program;

(3) Has been excluded from participation under Medicaid, Medicare, or any other federally funded health care program;

(4) Has had its billing privileges denied or revoked;

(5) Has been administratively dissolved by the Iowa secretary of state, or similar action has been taken by a comparable agency in another state; or

(6) Shares a national provider identification (NPI) number or tax ID number with another provider that meets the criteria specified in subparagraph 79.14(3)“a”(1), (2), (3), (4), or (5).

b. The Iowa Medicaid enterprise may deny enrollment to a provider applicant or disenroll a current provider that has any affiliation as set forth in this rule if the department determines that the affiliation poses a risk of fraud, waste, or abuse. Such denial or disenrollment is appealable under 441—Chapter 7 but, notwithstanding any provision to the contrary in that chapter, the provider shall bear the burden to prove by clear and convincing evidence that the affiliation does not pose any risk of fraud, waste, or abuse.

c. For purposes of this rule, the term “direct or indirect affiliation” includes but is not limited to relationships between individuals, business entities, or a combination of the two. The term includes but is not limited to direct or indirect business relationships that involve:

(1) A compensation arrangement;

(2) An ownership arrangement;

(3) Managerial authority over any member of the affiliation;

(4) The ability of one member of the affiliation to control any other; or

(5) The ability of a third party to control any member of the affiliation.

~~79.14(4) Providers not approved as the type of Medicaid provider requested shall have the right to appeal under 441—Chapter 7.~~

79.14(4) Screening procedures and requirements. Providers applying for participation in the Iowa Medicaid program shall be subject to the “limited,” “moderate,” or “high” categorical risk screening procedures and requirements in accordance with 42 CFR §455.450.

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. For the types of providers that are recognized as a provider under the Medicare program, the Iowa Medicaid enterprise shall use the same categorical risk screening procedures and requirements assigned to that provider type by Medicare pursuant to 42 CFR §424.518.

b. Provider types not assigned a screening level by the Medicare program shall be subject to the procedures of the “limited” risk screening level pursuant to 42 CFR §455.450.

c. Adjustment of risk level. The Iowa Medicaid enterprise shall adjust the categorical risk screening procedures and requirements from “limited” or “moderate” to “high” when any of the following occurs:

(1) The Iowa Medicaid enterprise imposes a payment suspension on a provider based on credible allegation of fraud, waste, or abuse; the provider receives a Medicaid overpayment; or within the previous ten years, the provider has been excluded by the Office of the Inspector General or another state’s Medicaid program; or

(2) The Iowa Medicaid enterprise or the Centers for Medicare and Medicaid Services in the previous six months lifted a temporary moratorium for the particular provider type and a provider that was prevented from enrolling based on the moratorium applies for enrollment as a provider at any time within six months from the date the moratorium was lifted.

~~79.14(5) Effective date of approval. Applications shall be approved retroactive to the date requested by the provider or the date the provider meets the applicable participation criteria, whichever is later, not to exceed 12 months retroactive from the receipt of the application forms by the Iowa Medicaid enterprise provider services unit.~~

79.14(5) Notification. A provider shall be notified of the decision on the provider’s application within 30 calendar days of receipt by the Iowa Medicaid enterprise provider services unit of a complete and correct application with all required documents, including, but not limited to, if applicable, any application fees or screening results.

~~79.14(6) Providers approved for certification as a Medicaid provider shall complete a provider participation agreement as required by rule 441—79.6(249A).~~

79.14(6) A provider that is not approved as the Medicaid provider type requested shall have the right to appeal under 441—Chapter 7.

~~79.14(7) No payment shall be made to a provider for care or services provided prior to the effective date of the department’s approval of an application, unless the provider was enrolled and participating in the Iowa Medicaid program as of April 1, 1993.~~

79.14(7) Effective date of approval. An application shall be approved retroactive to the date requested by the provider or the date the provider meets the applicable participation criteria, whichever is later, not to exceed 12 months retroactive from the receipt of the application with all required documents by the Iowa Medicaid enterprise provider services unit.

~~79.14(8) Payment rates dependent on the nature of the provider or the nature of the care or services provided shall be based on information on the application form, together with information on claim forms, or on rates paid the provider prior to April 1, 1993.~~

79.14(8) A provider approved for certification as a Medicaid provider shall complete a provider participation agreement as required by rule 441—79.6(249A).

~~79.14(9) Amendments to application forms shall be submitted to the Iowa Medicaid enterprise provider services unit and shall be approved or denied within 30 calendar days. Approval of an amendment shall be retroactive to the date requested by the provider or the date the provider meets all applicable criteria, whichever is later, not to exceed 30 days prior to the receipt of the amendment by the Iowa Medicaid enterprise provider services unit. Denial of an amendment may be appealed under 441—Chapter 7.~~

79.14(9) No payment shall be made to a provider for care or services provided prior to the effective date of the Iowa Medicaid enterprise’s approval of an application.

~~79.14(10) Providers who have not submitted claims in the last 24 months will be sent a notice asking if they wish to continue participation. Providers failing to reply to the notice within 30 calendar days of the date on the notice will be terminated as providers. Providers who do not submit any claims in 48 months will be terminated as providers without further notification.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

79.14(10) Payment rates dependent on the nature of the provider or the nature of the care or services provided shall be based on information on the application, together with information on claim forms, or on rates paid the provider prior to April 1, 1993.

79.14(11) Report of changes. The provider shall inform the Iowa Medicaid enterprise of all pertinent changes to enrollment information within 60 days of the change. Pertinent changes include, but are not limited to, changes to the business entity name, individual provider name, tax identification number, mailing address, and telephone number.

a. When a provider fails to provide current information within the 60-day period, the department may terminate the provider's Medicaid enrollment upon 30 days' notice. The termination may be appealed under 441—Chapter 7.

b. When the department incurs an informational tax-reporting fine because a provider submitted inaccurate information or failed to submit changes to the Iowa Medicaid enterprise in a timely manner, the fine shall be the responsibility of the individual provider to the extent that the fine relates to or arises out of the provider's failure to keep all provider information current.

(1) The provider shall remit the amount of the fine to the department within 30 days of notification by the department that the fine has been imposed.

(2) Payment of the fine may be appealed under 441—Chapter 7.

79.14(11) An amendment to an application shall be submitted to the Iowa Medicaid enterprise provider services unit and shall be approved or denied within 30 calendar days. Approval of an amendment shall be retroactive to the date requested by the provider or the date the provider meets all applicable criteria, whichever is later, not to exceed 30 days prior to the receipt of the amendment by the Iowa Medicaid enterprise provider services unit. Denial of an amendment may be appealed under 441—Chapter 7.

79.14(12) A provider that has not submitted a claim in the last 24 months will be sent a notice asking if the provider wishes to continue participation. A provider that fails to reply to the notice within 30 calendar days of the date on the notice will be terminated as a provider. Providers that do not submit any claims in 48 months will be terminated as providers without further notification.

79.14(13) Report of changes. The provider shall inform the Iowa Medicaid enterprise of all pertinent changes to enrollment information within 35 days of the change. Pertinent changes include, but are not limited to, changes to the business entity name, individual provider name, tax identification number, mailing address, telephone number, or any information required to be disclosed by subrule 79.14(3).

a. When a provider reports false, incomplete, or misleading information on any application or reapplication, or fails to provide current information within the 35-day period, the Iowa Medicaid enterprise may immediately terminate the provider's Medicaid enrollment. The termination may be appealed under 441—Chapter 7. Such termination remains in effect notwithstanding any pending appeal.

b. When the department incurs an informational tax-reporting fine or is required to repay the federal share of medical assistance paid to the provider because a provider submitted inaccurate information or failed to submit changes to the Iowa Medicaid enterprise in a timely manner, the fine or repayment shall be the responsibility of the individual provider to the extent that the fine or repayment relates to or arises out of the provider's failure to keep all provider information current.

(1) The provider shall remit the amount of the fine or repayment to the department within 30 days of notification by the department that the fine has been imposed.

(2) Payment of the fine or repayment may be appealed under 441—Chapter 7.

79.14(14) Provider termination or denial of enrollment. The Iowa Medicaid enterprise must terminate or deny any provider enrollment when the provider has violated any requirements identified in 42 CFR §455.416.

79.14(15) Temporary moratoria. The Iowa Medicaid enterprise must impose any temporary moratorium as identified in 42 CFR §455.470.

79.14(16) Provider revalidation. Providers are required to complete the application process and screening requirements as detailed in this rule every five years.

HUMAN SERVICES DEPARTMENT[441](cont'd)

79.14(17) Recoupment. A provider is strictly liable for any failure to disclose the information required by subrule 79.14(3) or any failure to report a change required by subrule 79.14(13). The department shall recoup as incorrectly paid all funds paid to the provider before a complete disclosure or report of change was made. The department shall also recoup as incorrectly paid all funds to any provider that billed the Iowa Medicaid enterprise while the provider was administratively dissolved by the Iowa secretary of state or comparable agency of another state, even if the provider subsequently obtains a retroactive reinstatement from the Iowa secretary of state or similar action was taken against the provider by a comparable agency of another state.

This rule is intended to implement Iowa Code section 249A.4.

ARC 0436C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

Historically, since the habilitation services program began, the upper rate limit for hourly services has been considered to be set higher than the actual cost and the daily rate cap has been considered to be set too low, resulting in providers’ submitting requests for exception to policy to exceed the daily home-based habilitation services upper rate cap. These amendments will balance the rates.

These amendments propose to:

1. Increase the daily rate cap for home-based habilitation services from \$105.97 to \$200.
2. Change the definition of a daily unit of service for home-based habilitation services from 14 hours to 8 or more hours. A daily unit of service will be when 8 or more hours of direct services are provided during a 24-hour period on average over the course of a calendar month.
3. Maintain the hourly rate cap and limits for home-based habilitation services.
4. Limit the total daily cost for hourly home-based habilitation services to no more than the daily rate cap set for home-based habilitation services.

Any interested person may make written comments on the proposed amendments on or before November 20, 2012. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not contain any waiver provisions because the Department has an established procedure for considering exceptions to policy. A waiver of any of these rules may be requested through that process. In addition, requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend subrule **79.1(2)**, provider category “Home- and community-based habilitation services,” as follows:

Provider category	Basis of reimbursement	Upper limit
Home- and community-based habilitation services:		
1. No change.		
2. Home-based habilitation	Retrospective cost-related. See 79.1(24)	\$46.70 per hour <u>not to exceed \$6083 per month, or \$105.97 \$200 per day.</u>
3. to 5. No change.		

ITEM 2. Amend paragraph **79.1(24)“a”** as follows:

a. Units of service.

(1) No change.

(2) A unit of home-based habilitation is one hour (for up to 7 hours per day) or one day (for 8 or more hours per day), based on the average hours of service provided during a 24-hour period as an average over a calendar month. Reimbursement for hourly services shall not exceed the upper limit for daily home-based habilitation services set in 79.1(2). EXCEPTIONS:

1. ~~A unit of service is one day when a member receives direct supervision for 14 or more hours per day, averaged over a calendar month. The member’s comprehensive service plan must identify and reflect the need for this amount of supervision. The provider’s documentation must support the number of direct support hours identified in the comprehensive service plan. The daily unit of service shall be used when a member receives services for 8 or more hours provided during a 24-hour period as an average over a calendar month. The hourly unit shall be used when the member receives services for 1 to 7 hours provided during a 24-hour period as an average over a calendar month.~~

2. ~~When cost-effective, a daily rate may be developed for members needing fewer than 14 hours of direct supervision per day. The provider must obtain approval from the Iowa Medicaid enterprise for a daily rate for fewer than 14 hours of service per day. The member’s comprehensive service plan must identify and reflect the need for the amount of supervision and skills training requested. The provider’s documentation must support the number of direct support hours identified in the comprehensive service plan.~~

(3) to (6) No change.

ARC 0433C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 82, “Intermediate Care Facilities for the Mentally Retarded,” Iowa Administrative Code.

The proposed amendments change terminology to use the preferred terms “intellectual disability” and “intellectually disabled” rather than “mental retardation” or “mentally retarded.”

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Iowa Legislature recently passed 2012 Iowa Acts, Senate File 2247, which makes similar terminology changes in the Iowa Code. Although that bill does not direct the Department to make rule changes, these amendments are aligned with the intent of the legislation.

Any interested person may make written comments on the proposed amendments on or before November 20, 2012. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 82**, title, as follows:

INTERMEDIATE CARE FACILITIES FOR ~~THE MENTALLY RETARDED~~
PERSONS WITH AN INTELLECTUAL DISABILITY

ITEM 2. Amend rule 441—82.2(249A), introductory paragraph, as follows:

441—82.2(249A) Licensing and certification. In order to participate in the program, a facility shall be licensed as a hospital, nursing facility, or an intermediate care facility for ~~the mentally retarded persons~~ with an intellectual disability by the department of inspections and appeals under the department of inspections and appeals rules found in 481—Chapter 64. The facility shall meet the following conditions of participation:

ITEM 3. Amend subrule 82.2(1) as follows:

82.2(1) Governing body and management.

a. to *c.* No change.

d. *Services provided under agreements with outside sources.*

(1) If a service required under this rule is not provided directly, the facility shall have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement shall:

1. Contain the responsibilities, functions, objectives, and other terms agreed to by both parties.

2. Provide that the facility is responsible for ensuring that the outside services meet the standards for quality of services contained in this rule.

(3) The facility shall ensure that outside services meet the needs of each client.

(4) If living quarters are not provided in a facility owned by the ~~ICF/MR~~ ICF/ID, the ~~ICF/MR~~ ICF/ID remains directly responsible for the standards relating to physical environment that are specified in subrule 82.2(7), paragraphs “a” to “g,” “j,” and “k.”

e. No change.

ITEM 4. Amend subrule 82.2(3) as follows:

82.2(3) Facility staffing.

a. ~~Qualified mental retardation~~ intellectual disability professional. Each client's active treatment program shall be integrated, coordinated and monitored by a qualified ~~mental retardation~~ intellectual disability professional who has at least one year of experience working directly with persons with ~~mental retardation~~ an intellectual disability or other developmental disabilities and is one of the following:

(1) A doctor of medicine or osteopathy.

(2) A registered nurse.

(3) An individual who holds at least a bachelor's degree in a professional category specified in 82.2(3)“b”(5).

b. *Professional program services.*

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) to (5) No change.

(6) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of 82.2(3)"b"(5) are not required except for qualified ~~mental retardation~~ intellectual disability professionals who must meet the requirements set forth in 82.2(3)"a."

c. No change.

d. *Direct care (residential living unit) staff.*

(1) The facility shall provide sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.

(2) Direct care staff are defined as the present on-duty staff calculated over all shifts in a 24-hour period for each defined residential living unit.

(3) Direct care staff shall be provided by the facility in the following minimum ratios of direct care staff to clients:

1. For each defined residential living unit serving children under the age of 12, severely and profoundly ~~retarded~~ intellectually disabled clients, clients with severe physical disabilities, or clients who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff-to-client ratio is 1 to 3.2.

2. For each defined residential living unit serving moderately ~~retarded~~ intellectually disabled clients, the staff-to-client ratio is 1 to 4.

3. For each defined residential living unit serving clients who function within the range of mild ~~retardation~~ intellectual disability, the staff-to-client ratio is 1 to 6.4.

4. When there are no clients present in the living unit, a responsible staff member must be available by telephone.

e. No change.

ITEM 5. Amend paragraph **82.2(4)"f"** as follows:

f. *Program monitoring and change.*

(1) The individual program plan shall be reviewed at least by the qualified ~~mental retardation~~ intellectual disability professional and revised as necessary, including, but not limited to, situations in which the client:

1. Has successfully completed an objective or objectives identified in the individual program plan.
2. Is regressing or losing skills already gained.
3. Is failing to progress toward identified objectives after reasonable efforts have been made.
4. Is being considered for training toward new objectives.

(2) to (4) No change.

ITEM 6. Amend subparagraph **82.2(7)"b"(3)** as follows:

(3) The department of inspections and appeals may grant a variance from the limit of four clients per room only if a physician who is a member of the interdisciplinary team and who is a qualified ~~mental retardation~~ intellectual disability professional certifies that each client to be placed in a bedroom housing more than four persons is so severely medically impaired as to require direct and continuous monitoring during sleeping hours and documents the reasons why housing in a room of only four or fewer persons would not be medically feasible.

ITEM 7. Amend rule 441—82.3(249A), introductory paragraph, as follows:

441—82.3(249A) Conditions of participation for intermediate care facilities for the ~~mentally retarded~~ persons with an intellectual disability. All intermediate care facilities for the ~~mentally retarded~~ persons with an intellectual disability must enter into a contractual agreement with the department which sets forth the terms under which they will participate in the program.

ITEM 8. Amend subrule 82.3(2) as follows:

82.3(2) Title XIX provider agreements. The health care facility must be recommended for certification by the Iowa department of inspections and appeals for participation as an intermediate care facility for the ~~mentally retarded~~ persons with an intellectual disability before a provider agreement may

HUMAN SERVICES DEPARTMENT[441](cont'd)

be issued. All survey procedures and certification processes shall be in accordance with Department of Health and Human Services publication "Providers Certification State Operations Manual." The effective date of a provider agreement may not be earlier than the date of certification.

a. and b. No change.

c. The department may, for good cause, elect not to execute an agreement. Good cause shall be defined as a continued or repeated failure to operate an intermediate care facility for ~~the mentally retarded~~ persons with an intellectual disability in compliance with rules and regulations of the program.

d. to f. No change.

ITEM 9. Amend subrule 82.5(14) as follows:

82.5(14) Payment to new facility. A facility receiving Medicaid ~~ICF/MR~~ ICF/ID certification on or after July 1, 1992, shall be subject to the provisions of this subrule.

a. A facility receiving initial Medicaid certification for ~~ICF/MR~~ ICF/ID level of care shall submit a budget for six months of operation beginning with the month in which Medicaid certification is given. The budget shall be submitted at least 30 days in advance of the anticipated certification date. The Medicaid per diem rate for a new facility shall be based on the submitted budget subject to review by the accounting firm under contract with the department. The rate shall be subject to a maximum set at the eightieth percentile of all participating community-based Iowa ~~ICFs/MR~~ ICFs/ID with established base rates. The eightieth percentile maximum rate shall be adjusted July 1 of each year. The state hospital schools shall not be included in the compilation of facility costs. The beginning rates for a new facility shall be effective with the date of Medicaid certification.

b. Initial cost report. Following six months of operation as a Medicaid-certified ~~ICF/MR~~ ICF/ID, the facility shall submit a report of actual costs. The rate computed from this cost report shall be adjusted to 100 percent occupancy plus the annual percentage increase of the Consumer Price Index for all urban consumers, U.S. city average (hereafter referred to as the Consumer Price Index). For the period beginning July 1, 2009, and ending June 30, 2010, 3 percent shall be used to adjust costs for inflation, instead of the annual percentage increase of the Consumer Price Index. Business start-up and organization costs shall be accounted for in the manner prescribed by the Medicare and Medicaid standards. Any costs that are properly identifiable as start-up costs, organization costs or capitalizable as construction costs must be appropriately classified as such.

(1) and (2) No change.

c. No change.

d. Completion of 12 months of operation. Following the first 12 months of operation as a Medicaid-certified ~~ICF/MR~~ ICF/ID as described in subrule 82.5(14), the facility shall submit a cost report for the second six months of operation. An on-site audit of facility costs shall be performed by the accounting firm under contract with the department. Based on the audited cost report, a rate shall be established for the facility. This rate shall be considered the base rate until rebasing of facility costs occurs.

(1) and (2) No change.

e. to g. No change.

ITEM 10. Amend subrule 82.6(1) as follows:

82.6(1) Interdisciplinary team. The initial evaluation for admission shall be conducted by an interdisciplinary team. The team shall consist of a physician, a social worker, and other professionals. At least one member of the team shall be a qualified ~~mental-retardation~~ intellectual disability professional.

ITEM 11. Amend paragraph **82.6(2)"c"** as follows:

c. An explicit recommendation with respect to admission or in the case of persons who make application while in the facility, continued care in the facility. Where it is determined that intermediate care facility for ~~the mentally retarded~~ persons with an intellectual disability services are required by an individual whose needs might be met through the use of alternative services which are currently unavailable, this fact shall be entered in the record, and plans shall be initiated for the active exploration of alternatives.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 12. Amend subrule 82.6(3) as follows:

82.6(3) *Certification statement.* Eligible individuals may be admitted to an intermediate care facility for ~~the mentally retarded~~ persons with an intellectual disability upon the certification of a physician that there is a necessity for care at the facility. Eligibility shall continue as long as a valid need for the care exists.

ITEM 13. Amend subrule 82.9(1) as follows:

82.9(1) *Resident care agreement.* The ~~ICF/MR~~ ICF/ID Resident Care Agreement, Form 470-0374, shall be used as a three-party contract among the facility, the resident, and the department to spell out the duties, rights, and obligation of all parties.

ITEM 14. Amend subrule 82.10(4) as follows:

82.10(4) *Transfer records.* When a resident is transferred to another facility, transfer information shall be summarized from the facility's records in a copy to accompany the resident. This information shall include:

- a. A transfer form of diagnosis.
- b. Aid to daily living information.
- c. Transfer orders.
- d. Nursing care plan.
- e. Physician's or qualified ~~mental retardation~~ intellectual disability professional's orders for care.
- f. The resident's personal records.
- g. When applicable, the personal needs fund record.

ITEM 15. Amend rule 441—82.11(249A) as follows:

441—82.11(249A) *Continued stay review.* The Iowa Medicaid enterprise (IME) medical services unit shall be responsible for reviews of each resident's need for continuing care in intermediate care facilities for ~~the mentally retarded~~ persons with an intellectual disability.

This rule is intended to implement Iowa Code section 249A.12.

ITEM 16. Amend rule 441—82.12(249A) as follows:

441—82.12(249A) *Quality of care review.* The Iowa Medicaid enterprise (IME) medical services unit shall carry out the quality of care studies in intermediate care facilities for ~~the mentally retarded~~ persons with an intellectual disability.

This rule is intended to implement Iowa Code section 249A.12.

ITEM 17. Amend subrule 82.14(4) as follows:

82.14(4) *Periods authorized for payment.*

- a. Payment shall be made on a per diem basis for the portion of the month the resident is in the facility.
- b. Payment will be authorized as long as the resident is certified as needing care in an intermediate care facility for ~~the mentally retarded~~ persons with an intellectual disability.
- c. Payment will be approved for the day of admission but not the day of discharge or death.
- d. Payment will be approved for periods the resident is absent to visit home for a maximum of 30 days annually. Additional days may be approved for special programs of evaluation, treatment or habilitation outside the facility. Documentation as to the appropriateness and therapeutic value of resident visits and outside programming, signed by a physician or qualified ~~mental retardation~~ intellectual disability professional, shall be maintained at the facility.
- e. and f. No change.

ITEM 18. Amend rule 441—82.18(249A), introductory paragraph, as follows:

441—82.18(249A) *Out-of-state facilities.* Payment will be made for care in out-of-state intermediate care facilities for ~~the mentally retarded~~ persons with an intellectual disability. Out-of-state facilities shall abide by the same policies as in-state facilities with the following exceptions:

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 19. Amend rule 441—82.19(249A) as follows:

441—82.19(249A) State-funded personal needs supplement. A Medicaid member living in an intermediate care facility for persons with ~~mental retardation~~ an intellectual disability who has countable income for purposes of rule 441—75.16(249A) of less than \$50 per month shall receive a state-funded payment from the department for the difference between that countable income and \$50 if the legislature has appropriated funding specifically for this purpose. This payment shall not be considered a benefit under Title XIX of the Social Security Act.

This rule is intended to implement Iowa Code Supplement section 249A.30A.

ARC 0435C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 88, “Managed Health Care Providers,” Iowa Administrative Code.

These amendments will add language to ensure that managed care organization (MCO) network providers who seek a state fair hearing on behalf of a Medicaid member have involved the member and have that member’s specific consent to pursue a state fair hearing.

These amendments will conform the rules of the Department to federal regulations that require consent of the member when a network provider requests a hearing. 42 CFR 438.402 specifically requires written consent of the member.

Any interested person may make written comments on the proposed amendments on or before November 20, 2012. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because all Medicaid providers who are members of a managed care organization (MCO) should be subject to the same requirements. However, requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Adopt the following new subrule 88.8(6):

88.8(6) Consent for state fair hearing. Network providers which are contracted and in good standing with a medical managed care organization (MCO) may request a state fair hearing only for disputes regarding payment of claims, specifically, disputes concerning the denial of a claim or reduction in payment, and only when acting on behalf of the member. The network provider requesting such a state fair hearing must have the prior, express, signed written consent of the member or the member’s lawfully appointed guardian in order to request such a hearing. Notwithstanding any contrary provision in 441—Chapter 7, no state fair hearing will be granted unless the network provider submits a document providing such member’s approval of the request for a state fair hearing. The document must specifically inform the member that protected health information (PHI) may be discussed at the hearing and may be made public in the course of the hearing and subsequent administrative and judicial proceedings. The

HUMAN SERVICES DEPARTMENT[441](cont'd)

document must contain language that indicates the member's knowledge of the potential for PHI to become public and that the member knowingly, voluntarily and intelligently consents to the network provider's bringing the state fair hearing on the member's behalf. An administrative law judge must dismiss any state fair hearing that is certified for a contested case hearing but does not strictly comply with all of the requirements of this subrule.

ITEM 2. Adopt the following new subrule 88.68(7):

88.68(7) *Consent for state fair hearing.* Network providers which are contracted and in good standing with the Iowa plan contractor may request a state fair hearing only for disputes regarding payment of claims, specifically, disputes concerning the denial of a claim or reduction in payment, and only when acting on behalf of the member. The network provider requesting such a state fair hearing must have the prior, express, signed written consent of the member or the member's lawfully appointed guardian in order to request such a hearing. Notwithstanding any contrary provision in 441—Chapter 7, no state fair hearing will be granted unless the network provider submits a document providing such member's approval of the request for a state fair hearing. The document must specifically inform the member that protected health information (PHI) may be discussed at the hearing and may be made public in the course of the hearing and subsequent administrative and judicial proceedings. The document must contain language that indicates the member's knowledge of the potential for PHI to become public and that the member knowingly, voluntarily and intelligently consents to the network provider's bringing the state fair hearing on the member's behalf. An administrative law judge must dismiss any state fair hearing that is certified for a contested case hearing but does not strictly comply with all of the requirements of this subrule.

ARC 0411C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby gives Notice of Intended Action to amend Chapter 71, “Administration of the Conveyance Safety Program,” Iowa Administrative Code.

This amendment authorizes the Labor Commissioner to remove from service an elevator that is operating without a permit. Although by statute it is illegal to operate an elevator without a permit, this amendment sets forth necessary enforcement procedures.

The purpose of this amendment is to protect the health and safety of the public and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on November 20, 2012, a public hearing will be held on November 21, 2012, at 9 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than November 21, 2012, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

No variance procedures are included in this rule. Applicable variance procedures are set forth in 875—Chapter 66.

LABOR SERVICES DIVISION[875](cont'd)

After analysis and review of this rule making, this amendment will have no impact on jobs.

This amendment is intended to implement Iowa Code chapter 89A.

The following amendment is proposed.

Amend subrule 71.7(1) as follows:

71.7(1) Operation of equipment covered by this chapter without a current operating permit is prohibited, except as authorized by rules 875—71.6(89A), 875—71.8(89A), and 875—71.20(89A). If operation of a conveyance is prohibited under this rule, the labor commissioner may post notice on the conveyance that it is not to be used. The conveyance may be returned to service only after an operating permit for the conveyance has been issued or reissued.

ARC 0437C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences hereby gives Notice of Intended Action to amend Chapter 61, “Licensure of Salons and Schools of Cosmetology Arts and Sciences,” Iowa Administrative Code.

These proposed amendments establish rules for a cosmetology school to teach a single course curriculum. The amendments establish the prescribed minimum physical and equipment requirements and reduce the number of instructors required on site if the school is offering only clinic services or theory instruction to fewer than 15 students. All other changes are technical in nature.

Any interested person may make written comments on the proposed amendments no later than November 20, 2012, addressed to Susan Reynolds, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; e-mail susan.reynolds@idph.iowa.gov.

A public hearing will be held on November 20, 2012, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

After analysis and review of this rule making, a positive impact on jobs could exist. This rule making allows cosmetology schools more flexibility in providing education and instruction to cosmetology students.

These amendments are intended to implement Iowa Code section 157.8.

The following amendments are proposed.

ITEM 1. Rescind rule 645—61.12(157) and adopt the following **new** rule in lieu thereof:

645—61.12(157) Physical requirements for schools of cosmetology arts and sciences.

61.12(1) Cosmetology schools offering cosmetology courses of study as specified in 645—61.14(157) shall meet the following physical requirements. In addition to the cosmetology courses, the school may offer courses of study for electrology, esthetics, and nail technology.

a. The school premises shall have a minimum floor space of 3000 square feet and, when the enrollment in a school exceeds 30 students, additional floor space of 30 square feet shall be required for each additional student enrolled in the school.

b. Each licensed school shall provide at least one clinic area where the paying public will receive services. The clinic area shall be confined to the premises occupied by the school.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- c.* A school shall provide a theory classroom(s) separate from the clinic area.
- d.* Each school shall maintain a library for students consisting of textbooks, current trade publications and business management materials.
- e.* The school shall have a separate area to be used as a dispensary. The dispensary shall be equipped with lavatory, shelves or drawers for storing chemicals and sanitized articles, a wet sterilizer and any other sanitation items required in 645—Chapter 63.
- f.* Two restrooms shall be equipped with toilets, lavatories, soap and towel dispensers.
- g.* A laundry room shall be separated from the clinic area by a full wall or partition.
- h.* A separate room shall be equipped for the practice of esthetics and electrology.
- i.* Each licensed school shall have an administrative office.

61.12(2) Schools that teach only one course of study for nail technology, esthetics or electrology shall meet the following physical requirements:

- a.* The school premises shall have a minimum floor space of 1000 square feet and, when the enrollment in a school exceeds 10 students, additional floor space of 30 square feet shall be required for each additional student enrolled in the school.
- b.* Each licensed school shall provide at least one clinic area where the paying public will receive services. The clinic area shall be confined to the premises occupied by the school.
- c.* A school shall provide a theory classroom(s) separate from the clinic area; or alternatively, one area may be used for both theory instruction and clinical services if the course schedule clearly demonstrates that theory instruction and clinical services are not taught simultaneously.
- d.* Each school shall maintain a library for students consisting of textbooks, current trade publications and business management materials.
- e.* The school shall have a separate area to be used as a dispensary. The dispensary shall be equipped with lavatory, shelves or drawers for storing chemicals and sanitized articles, a wet sterilizer and any other sanitation items required in 645—Chapter 63.
- f.* Two restrooms shall be equipped with toilets, lavatories, soap and towel dispensers.
- g.* A laundry room shall be separated from the clinic area by a full wall or partition.
- h.* Each licensed school shall have an administrative office.

ITEM 2. Rescind rule 645—61.13(157) and adopt the following **new** rule in lieu thereof:

645—61.13(157) Minimum equipment requirements.

61.13(1) Each school offering a cosmetology course shall have the following minimum equipment:

- a.* Workstations equipped with chair, dresserette, closed drawer or container for sanitized articles, and mirror (maximum of two students per unit);
- b.* One set of textbooks for each student and instructor;
- c.* Shampoo bowls located in the clinic area and readily accessible for students and clients;
- d.* Audiovisual equipment available for each classroom;
- e.* Chair and table area for each student in the classroom; and
- f.* Labeled bottles and containers showing intended use of the contents.

61.13(2) Each school offering a nail technology course shall have the following minimum equipment:

- a.* Workstations equipped with patron chair, manicuring table and student chair for every two students enrolled;
- b.* Pedicure station for every two students enrolled;
- c.* One set of textbooks for each student and instructor;
- d.* Audiovisual equipment available for each classroom;
- e.* Chair and table area for each student in the classroom; and
- f.* Labeled bottles and containers showing intended use of the contents.

61.13(3) Each school offering an esthetic course shall have the following minimum equipment:

- a.* One workstation for every two students enrolled;
- b.* One facial chair for every three students enrolled;
- c.* One set of facial equipment for four workstations;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- d.* One set of textbooks for each student and instructor;
- e.* Audiovisual equipment available for each classroom;
- f.* Chair and table area for each student in the classroom; and
- g.* Labeled bottles and containers showing intended use of the contents.

ITEM 3. Rescind rule 645—61.15(157) and adopt the following **new** rule in lieu thereof:

645—61.15(157) Instructors. All instructors in a school of cosmetology arts and sciences shall be licensed by the department.

61.15(1) The number of instructors for each school of cosmetology arts and sciences shall be based upon total enrollment, with a minimum of 2 licensed instructors employed on a full-time basis for up to 30 students and an additional instructor for each additional 15 students. The school shall have 2 instructors on duty during school hours. A student instructor shall not be used to meet licensed instructor-to-student ratios.

a. A school operated by an area community college prior to September 1, 1982, with only 1 instructor per 15 students is not subject to this subrule and may continue to operate with the ratio of 1 instructor to 15 students. A student instructor shall not be used to meet licensed instructor-to-student ratios.

b. A school with fewer than 30 students enrolled may have 1 licensed instructor on site in the school if offering only clinic services or only theory instruction in a single classroom and fewer than 15 students are present.

c. A school offering clinic services and theory instruction simultaneously to fewer than 15 students must have at least 2 licensed instructors present.

d. A school with more than 30 students enrolled shall have at least 2 licensed instructors on site.

61.15(2) An instructor teaching a course in electrology, esthetics or nail technology shall also hold a license in that practice or hold a cosmetology license that shows proof of having completed training in those practices equivalent to that of a license holder in that practice.

61.15(3) An instructor teaching a course in microdermabrasion, chemical peels, IPLs and lasers shall be certified by the state of Iowa to provide each of the services, as set forth in rule 645—60.4(157).

61.15(4) An instructor shall:

- a.* Be responsible for and in direct charge of all theory and practical classrooms and clinics at all times;
- b.* Familiarize students with the different standard supplies and equipment used in salons; and
- c.* Not perform cosmetology services, with or without compensation, on the school premises except for demonstration purposes.

ARC 0424C

SECRETARY OF STATE[721]

Notice of Termination

Pursuant to the authority of Iowa Code section 17A.4(1)“b,” the Secretary of State hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 0106C** on April 18, 2012, proposing to amend Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code. The amendments were also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin as **ARC 0107C** on the same date.

The period for comments passed without the Secretary’s receiving any comments requiring changes to the proposed amendments as they appeared in the Iowa Administrative Bulletin on April 18, 2012. Therefore, the Secretary of State finds no further need to proceed with rule making for **ARC 0106C**.

ARC 0425C**SECRETARY OF STATE[721]****Notice of Termination**

Pursuant to the authority of Iowa Code section 17A.4(1)“b,” the Secretary of State hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 0110C** on May 2, 2012, proposing to amend Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code. The proposed rule was also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin as **ARC 0109C** on the same date.

The period for comments passed without the Secretary’s receiving any comments requiring changes to the proposed rule as it appeared in the Iowa Administrative Bulletin on May 2, 2012. Therefore, the Secretary of State finds no further need to proceed with rule making for **ARC 0110C**.

ARC 0426C**SECRETARY OF STATE[721]****Notice of Termination**

Pursuant to the authority of Iowa Code section 17A.4(1)“b,” the Secretary of State hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 0239C** on August 8, 2012, proposing to amend Chapter 22, “Voting Systems,” Iowa Administrative Code. The amendments were also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin as **ARC 0238C** on the same date.

The period for comments passed without the Secretary’s receiving any comments requiring changes to the proposed amendments as they appeared in the Iowa Administrative Bulletin on August 8, 2012. Therefore, the Secretary of State finds no further need to proceed with rule making for **ARC 0239C**.

ARC 0423C**VOTER REGISTRATION COMMISSION[821]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Voter Registration Commission hereby gives Notice of Intended Action to adopt new Chapter 7, “Voter Registration Mailing Address Maintenance,” Iowa Administrative Code.

Proposed Chapter 7 includes procedures for maintaining, updating and removing mailing addresses from voter registration records. Iowa statute requires that the voter registration form contain a space for a voter to provide a mailing address if it is different from the voter’s residential address. Once the mailing address is added to the voter’s registration record, there are currently no established procedures for maintaining the address by updating it when notice is received from the post office or during the annual national change of address (NCOA) process or for removing the address when it is no longer valid.

Any interested person may make written suggestions or comments on the proposed rules on or before November 20, 2012. Written suggestions or comments should be directed to Sarah Reisetter, Director of Elections, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Secretary of State’s office by

VOTER REGISTRATION COMMISSION[821](cont'd)

telephone at (515)281-0145 or in person at the Secretary of State's office on the first floor of the Lucas State Office Building.

Requests for a public hearing must be received by November 20, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement Iowa Code chapter 48A.

The following amendment is proposed.

Adopt the following new 821—Chapter 7:

CHAPTER 7

VOTER REGISTRATION MAILING ADDRESS MAINTENANCE

821—7.1(48A) Mailing addresses on voter registration applications. The voter registration application shall contain a space for a voter to provide a mailing address if it is different from the voter's residential address.

7.1(1) *Voter registration application received from registered voter with notice of change to residential address, no new mailing address provided.* If a registered voter with a mailing address listed on the voter's registration record submits a new application with an updated residential address and no change to the mailing address, the county registrar shall remove the mailing address on the voter's registration record and mail the registration acknowledgment to the voter's new residential address.

7.1(2) *Voter registration application received from registered voter with no change to the residential address, no new mailing address provided.* If a registered voter with a mailing address listed on the voter's registration record submits a new application with no change to the residential address and no change to the mailing address, the county registrar shall not change the mailing address on the voter's registration record and mail the registration acknowledgment to the voter's mailing address.

7.1(3) *Voter registration application received from registered voter with no change to the residential address, new mailing address provided.* If a registered voter with a mailing address listed on the voter's registration record submits a new application with no change to the residential address and a new or updated mailing address, the county registrar shall list the voter's new or updated mailing address on the voter's registration record and mail the registration acknowledgment to the voter's new mailing address.

821—7.2(48A) Voter registration acknowledgment card returned from mailing address as undeliverable. If a voter registration acknowledgment card is mailed to the mailing address listed on a voter's registration record and the acknowledgment is returned to the county registrar as undeliverable by the United States Post Office, the county registrar shall leave the voter's status as active or pending, remove the mailing address from the voter's registration record, and mail another registration acknowledgment to the voter's residential address. If the acknowledgment mailed to the voter's residential address is also returned as undeliverable by the United States Post Office, the voter's registration record shall be made inactive and the voter shall be mailed a notice as required by Iowa Code section 48A.29, subsection 1.

821—7.3(48A) Absentee ballot sent to address on absentee ballot application. An absentee ballot shall be mailed to the address designated by the voter on the voter's absentee ballot application notwithstanding any other mailing address that may be listed on a voter's registration record. If an absentee ballot mailed to the address designated by the voter on the absentee ballot application is returned to the county commissioner as undeliverable by the United States Post Office, the county commissioner shall verify that the mailing address to which the ballot was sent matches the mailing address listed on the voter's absentee ballot application. If the ballot was sent to the correct mailing address, the commissioner shall void the absentee ballot request and send a notice to the voter's residential address notifying the voter that the absentee ballot request has been canceled because it was mailed to the address designated by the voter and was returned as undeliverable.

VOTER REGISTRATION COMMISSION[821](cont'd)

821—7.4(48A) Voter registration list maintenance notice returned from mailing address as undeliverable. If a voter registration list maintenance notice is sent to the mailing address listed on a voter's registration record and the notice is returned to the county registrar as undeliverable by the United States Post Office, the county registrar shall leave the voter's status as active, inactive or pending, remove the mailing address from the voter's registration record, and send the notice by forwardable mail to the voter's residential address. If the notice sent to the residential address on the voter's registration record is returned as undeliverable by the United States Post Office, the county registrar shall make the voter's status inactive, and the voter shall be mailed a notice as required by Iowa Code section 48A.29, subsection 1. A voter registration list maintenance notice for purposes of this rule includes any notice sent pursuant to Iowa Code section 48A.27 or 48A.28.

821—7.5(48A) National change of address (NCOA) match returns new mailing address information for a registered voter. County registrars that participate in the annual NCOA process shall include mailing address maintenance as part of the voter list review.

7.5(1) *NCOA match returns information indicating that the voter's address is a mailing address and the voter has no mailing address currently listed on the voter registration record.* If the NCOA match indicates that an active voter has a mailing address and there is no mailing address currently listed on the voter's registration record, the county registrar shall add the mailing address to the voter's registration record and mail a voter registration acknowledgment to the voter's new mailing address. If the acknowledgment is returned to the county registrar as undeliverable by the United States Post Office, the mailing address shall be removed from the voter's registration record, and the voter's status shall remain active.

7.5(2) *NCOA match returns information indicating that the voter's address is not a mailing address and the voter has a mailing address listed on the voter registration record.* If the NCOA match indicates that an active voter does not have a mailing address and there is a mailing address currently listed on the voter's registration record, the county registrar shall remove the mailing address from the voter's registration record and mail a voter registration acknowledgment to the voter's residential address. If the acknowledgment is returned to the county registrar as undeliverable by the United States Post Office, the mailing address shall be restored on the voter's registration record, and the voter's status shall remain active.

7.5(3) *NCOA match returns information indicating that the voter's address is a mailing address that does not match the mailing address currently listed on the voter registration record.* If the NCOA match indicates that an active voter has a mailing address that differs from the mailing address currently listed on the voter's registration record, the county registrar shall update the mailing address and mail a voter registration acknowledgment to the voter's new mailing address. If the acknowledgment is returned to the county registrar as undeliverable by the United States Post Office, the voter's status shall remain active, the previous mailing address shall be restored on the voter's registration record, and a voter registration acknowledgment shall be mailed to the voter's old mailing address. If the acknowledgment mailed to the voter's old mailing address is also returned to the county registrar as undeliverable by the United States Post Office, the voter's status shall be made inactive, and the voter shall be mailed a notice as required by Iowa Code section 48A.29, subsection 1.

821—7.6(48A) United States Post Office provides notice of commencement or termination of household mail delivery. If the United States Post Office provides official notice to the county registrar of commencement or termination of household mail delivery in a particular jurisdiction or area over which the registrar has authority to register voters and maintain the voter registration list, the county registrar may use that official notice to update or remove the mailing addresses on voter registration records affected by the notice. Mailing addresses may be added to or removed from the voter registration records based on the official notice from the United States Post Office. If a mailing address is added to or removed from a voter's registration record pursuant to this rule, a voter registration acknowledgment shall be mailed to the voter at the updated mailing or residential address on file. If the acknowledgment mailed to the updated address is returned as undeliverable by the United States Post Office, the voter's

VOTER REGISTRATION COMMISSION[821](cont'd)

registration status shall remain unchanged, and the voter's registration record shall be restored to remove the update initiated pursuant to this rule.

These rules are intended to implement Iowa Code chapter 48A.

ARC 0413C

ACCOUNTANCY EXAMINING BOARD[193A]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board amends Chapter 6, "Attest and Compilation Services," Chapter 7, "Certified Public Accounting Firms," Chapter 13, "Rules of Professional Ethics and Conduct," Chapter 20, "Practice Privilege for Out-of-State Certified Public Accountants," and Chapter 21, "Practice Privilege for Out-of-State Certified Public Accounting Firms," Iowa Administrative Code.

The amendment to subrule 6.1(3) clarifies who may exercise a practice privilege in Iowa pursuant to Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122.

The amendment to subrule 7.1(1) ensures that the rules are consistent and comply with Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122. New subrule 7.1(6) clarifies when an out-of-state firm may exercise a practice privilege pursuant to Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122.

The amendment to subrule 13.6(2) clarifies what an out-of-state CPA firm may or may not do in Iowa under the practice privilege, in compliance with Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122.

The amendment to subrule 20.5(1) clarifies what an out-of-state individual CPA may or may not do in Iowa with regard to attest and compilation services, in compliance with Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122. New subrule 20.5(3) clarifies who may review financial statements for a client in Iowa or for a client with a home office in Iowa pursuant to Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122.

The amendments to subrules 21.3(2) and 21.5(1) modify the services a firm may perform without Iowa licensure pursuant to Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122. New subrule 21.5(3) clarifies when a peer review must be completed in compliance with Iowa Code section 542.7.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 8, 2012, as **ARC 0254C**. No public comment was received on these amendments. These amendments are identical to those published under Notice.

These amendments have no fiscal impact to the State of Iowa.

These amendments were adopted by the Board on September 20, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 17A, 272C, and 546 and Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122.

These amendments shall become effective December 5, 2012.

The following amendments are adopted.

ITEM 1. Amend subrule 6.1(3) as follows:

6.1(3) CPAs performing attest services, whether certified in Iowa or exercising a practice privilege, must do so in a CPA firm that holds a permit to practice pursuant to Iowa Code section 542.7. However, a CPA exercising a practice privilege who works for an out-of-state CPA firm that does not hold a permit to practice under Iowa Code section 542.7 may provide review services in Iowa or for a client with a home office in Iowa as long as the firm complies with Iowa Code section 542.20, subsections 5 and 6, as amended by 2012 Iowa Acts, Senate File 2122, and associated rules.

ITEM 2. Amend subrule 7.1(1) as follows:

7.1(1) A Except as provided in subrule 7.1(6), a sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice as a firm of certified public accountants prior to:

a. Performing or offering to perform audit, review or other attest services in Iowa or for a client with a home office in Iowa; or

ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

b. Establishing an office in Iowa at which the firm uses the title “CPAs,” “CPA firm,” “certified public accountants,” or “certified public accounting firm.”

ITEM 3. Adopt the following **new** subrule 7.1(6):

7.1(6) An out-of-state CPA firm exercising a practice privilege may perform review services in Iowa or for a client with a home office in Iowa without first obtaining a firm permit to practice in Iowa as long as the firm complies with Iowa Code section 542.20, subsections 5 and 6, as amended by 2012 Iowa Acts, Senate File 2122, and associated rules.

ITEM 4. Amend subrule 13.6(2) as follows:

13.6(2) Practice privilege. All audit, review, and other attest services performed in Iowa or for a client with a home office in Iowa must be performed through a CPA firm that holds an active Iowa firm permit to practice; provided that, an out-of-state CPA firm exercising a practice privilege may perform review services in Iowa or for a client with a home office in Iowa without first obtaining a firm permit to practice in Iowa as long as the firm complies with Iowa Code section 542.20, subsections 5 and 6, as amended by 2012 Iowa Acts, Senate File 2122, and associated rules. Unless Iowa certification is specifically required by a governmental body or client, the individual CPAs performing such attest services may either hold an active Iowa CPA certificate or exercise a practice privilege as more fully described in Iowa Code section 542.20 as amended by 2012 Iowa Acts, Senate File 2122. LPAs and LPA firms are not authorized to perform attest services.

ITEM 5. Amend subrule 20.5(1) as follows:

20.5(1) Individuals providing audit, review or other attest services in Iowa or for a client with a home office in Iowa must practice through a CPA firm that holds an active permit to practice pursuant to Iowa Code section 542.7; provided that, an out-of-state CPA firm exercising a practice privilege may perform review services in Iowa or for a client with a home office in Iowa without first obtaining a firm permit to practice in Iowa as long as the firm complies with Iowa Code section 542.20, subsections 5 and 6, as amended by 2012 Iowa Acts, Senate File 2122, and associated rules.

ITEM 6. Adopt the following **new** subrule 20.5(3):

20.5(3) Individuals who provide reviews of financial statements, as provided in Iowa Code section 542.3, subsection 1, in Iowa or for a client with a home office in Iowa must provide such services through a certified public accounting firm that is validly licensed in the state of its principal place of business and that complies with the peer review and ownership provisions of Iowa Code section 542.7.

ITEM 7. Amend subrule 21.3(2) as follows:

21.3(2) Iowa licensure is required if:

- a. The firm performs or offers to perform ~~audit, review or other~~ attest services, other than review services, in Iowa or for a client with a home office in Iowa; or
- b. The firm has one or more offices in Iowa at which the firm uses the title “CPAs,” “CPA firm,” “certified public accountants,” or “certified public accounting firm.”

ITEM 8. Amend subrule 21.5(1) as follows:

21.5(1) ~~Audit, review or other attest~~ Attest services, other than review services, must be performed in Iowa or for a client with a home office in Iowa by a CPA firm that holds an active permit to practice under Iowa Code section 542.7.

ITEM 9. Adopt the following **new** subrule 21.5(3):

21.5(3) CPA firms providing review services in Iowa or for a client with a home office in Iowa must comply with the peer review and ownership provisions of Iowa Code section 542.7.

[Filed 10/4/12, effective 12/5/12]

[Published 10/31/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/31/12.

ARC 0420C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 9, "Public Records and Fair Information Practices," Iowa Administrative Code.

This amendment adds new Form 470-4670, "Addendum for Application and Review Forms for Release of Information." This form is attached to public assistance program applications and review forms. The form is used to obtain written permission from the client to request information necessary to determine program eligibility.

This amendment also changes the name of existing Form 470-1631, "Financial Institution Questionnaire," to "Bank or Credit Union Information," and removes Form 470-1632, "Landlord Questionnaire," from the rules because it has become obsolete.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0255C** on August 8, 2012. The Department received no comments during the comment period. As a result, this amendment is identical to the one published under Notice of Intended Action.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 234.6.

This amendment will become effective on January 1, 2013.

The following amendment is adopted.

Amend paragraph **9.7(1)“b”** as follows:

b. Obtaining information from a third party. The department is required to obtain information to establish eligibility, determine the amount of assistance, and provide services. Requests to third parties for this information involve release of confidential identifying information about clients. Except as provided in rule 441—9.9(17A,22), the department may make these requests only when the client has authorized the release on one of the following forms.

- (1) Form 470-0461, Authorization for Release of Information.
- (2) Form 470-1630, Household Member Questionnaire.
- (3) Form 470-1631, ~~Financial Institution Questionnaire~~ Bank or Credit Union Information.
- (4) ~~Form 470-1632, Landlord Questionnaire~~ Form 470-4670, Addendum for Application and Review Forms for Release of Information.
- (5) Form 470-1638, Request for School Verification.
- (6) Form 470-2844, Employer's Statement of Earnings.
- (7) Form 470-1640, Verification of Educational Financial Aid.
- (8) Form 470-3742, Financial Institution Verification.
- (9) Form 470-3951, Authorization to Obtain or Release Health Care Information.

[Filed 10/10/12, effective 1/1/13]

[Published 10/31/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/31/12.

ARC 0418C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 237A.5, the Department of Human Services amends Chapter 109, "Child Care Centers," and Chapter 110, "Child Development Homes," Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments eliminate the requirement for the Department to conduct repeat record check evaluations of transgressions already evaluated on individuals as they move from employer to employer. As employees move from employer to employer, they will still be required to undergo the record check process; however, transgressions that have already been evaluated will not need to be evaluated again as long as certain conditions are met.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0258C** on August 8, 2012. The Department did not receive any comments during the comment period. These amendments are identical to those published under Notice of Intended Action.

These amendments do not provide for waivers because the amendments confer a benefit on all persons affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 237A.5 as amended by 2012 Iowa Acts, Senate File 2164, section 2.

These amendments will become effective January 1, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subparagraph **109.6(6)“g”(4)**:

(4) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person's involvement with child care and has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The person may commence employment with another child care facility in accordance with the department's previous evaluation. The exemption is subject to all of the following conditions:

1. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.
2. Any restrictions placed on the person's employment by the department in the previous evaluation shall remain applicable in the person's subsequent employment.
3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides to the subsequent employer the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record check shall be reevaluated.
4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.

ITEM 2. Adopt the following **new** subparagraph **110.7(3)“c”(4)**:

(4) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person's involvement with child care and has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The person may commence employment with another child care facility in accordance with the department's previous evaluation. The exemption is subject to all of the following conditions:

1. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.
2. Any restrictions placed on the person's employment by the department in the previous evaluation shall remain applicable in the person's subsequent employment.
3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides to the subsequent employer the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record check shall be reevaluated.

HUMAN SERVICES DEPARTMENT[441](cont'd)

4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.

[Filed 10/10/12, effective 1/1/13]

[Published 10/31/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/31/12.

ARC 0419C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 156, "Payments for Foster Care," Iowa Administrative Code.

These amendments provide an increase to the foster family daily reimbursement rate and adoption subsidy daily maintenance rates effective July 1, 2012.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin as **ARC 0241C** on August 8, 2012. These amendments were also Adopted and Filed Emergency as **ARC 0240C** on the same date.

The Department received no comments on the proposed rule making and, as a result, these amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 234.38 and 2012 Iowa Acts, Senate File 2336, section 34.

These amendments will become effective December 5, 2012, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule 156.6(1) as follows:

156.6(1) Basic rate. A Effective July 1, 2012, a monthly payment for care in a foster family home licensed in Iowa shall be made to the foster family based on the following schedule:

Age of child	Daily rate
0 through 5	\$15.74 <u>\$15.98</u>
6 through 11	\$16.37 <u>\$16.62</u>
12 through 15	\$17.92 <u>\$18.19</u>
16 or over	\$18.16 <u>\$18.43</u>

ITEM 2. Amend rule **441—156.6(234)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 234.38 and ~~2011 Iowa Acts, House File 649, section 28(4)~~ 2012 Iowa Acts, Senate File 2336, section 34.

[Filed 10/10/12, effective 12/5/12]

[Published 10/31/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/31/12.

ARC 0417C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 202, “Foster Care Placement and Services,” Iowa Administrative Code.

These amendments update eligibility criteria, including increasing the minimum age for placement in supervised apartment living foster care and expansion of required services regarding the service plan for the Supervised Apartment Living (SAL) foster care program.

In addition, these amendments clarify that youth participating in the Education Training Voucher (ETV) program are also part of the population served under Iowa’s Independent Living Program (ILP). ILP rules explain which programs are under the umbrella for Iowa’s program to transition youth from foster care to adulthood. ETV is a federally funded program to financially assist youth formerly in foster care obtain postsecondary training and education.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0257C** on August 8, 2012. The Department did not receive any comments during the comment period. One change has been made to the amendments published under Notice. The verb “is” has been changed to “provide” in subparagraph 202.9(3)“c”(1). The subparagraph now reads as follows:

“(1) The living arrangement and mode of living are safe and suitable and provide an environment that allows for the child’s social and emotional needs to be met; and”

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, there will be an impact on private-sector jobs. The primary impact will be the better equipping of a population of youth with skill sets needed in today’s job market. Approximately 200 youth are served in the SAL foster care program annually.

These amendments are intended to implement Iowa Code section 234.6.

These amendments will become effective January 1, 2013.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [202.9, 202.11(7)“a”] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 0257C**, IAB 8/8/12.

[Filed 10/10/12, effective 1/1/13]

[Published 10/31/12]

[For replacement pages for IAC, see IAC Supplement 10/31/12.]

ARC 0427C**IOWA FINANCE AUTHORITY[265]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 16.5(1)“r,” 16.52 and 17A.3(1)“b,” the Iowa Finance Authority hereby amends Chapter 12, “Low-Income Housing Tax Credits,” Iowa Administrative Code.

These amendments replace the 2012 qualified allocation plan with the 2013 Low-Income Tax Credit Qualified Allocation Plan (QAP), which is incorporated by reference in rule 265—12.1(16).

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 22, 2012, as **ARC 0284C**. The Authority received public comment on the QAP and made certain changes to the QAP based on those comments.

The Iowa Finance Authority adopted these amendments on October 3, 2012.

After analysis and review of this rule making, it has been found that the rules will have a strong positive impact on jobs in that the award of tax credits pursuant to the rules will result in a substantial amount of construction and related work within the state of Iowa.

IOWA FINANCE AUTHORITY[265](cont'd)

These amendments are intended to implement Iowa Code sections 16.5(1)“r,” 16.52, 17A.12, and 17A.16 and Internal Revenue Code Section 42.

These amendments will become effective on December 5, 2012.

The following amendments are adopted.

ITEM 1. Amend rule 265—12.1(16) as follows:

265—12.1(16) Qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program ~~2012~~ 2013 Qualified Allocation Plan shall be the qualified allocation plan for the allocation of ~~2012~~ 2013 low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The qualified allocation plan does not include any amendments or editions created subsequent to ~~December 7, 2011~~ October 10, 2012.

ITEM 2. Amend rule 265—12.2(16) as follows:

265—12.2(16) Location of copies of the plan. The qualified allocation plan can be reviewed and copied in its entirety on the authority’s Web site at <http://www.iowafinanceauthority.gov>. Copies of the qualified allocation plan, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority’s Web site. The plan incorporates by reference IRC Section 42 and the regulations in effect as of ~~December 7, 2011~~ October 10, 2012. Additionally, the plan incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority’s Web site.

[Filed 10/11/12, effective 12/5/12]

[Published 10/31/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/31/12.

ARC 0430C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“f” and 16.5(1)“r,” the Iowa Finance Authority hereby amends Chapter 15, “Purchasing,” Iowa Administrative Code.

The purpose of this amendment is to modernize the Authority’s purchasing procedure by posting formal bids and requests for proposals on the Internet in lieu of advertising in a newspaper and to implement Iowa Code section 16.5(1)“f.”

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 22, 2012, as **ARC 0287C**. The Authority received no public comment on the proposed amendment. The Authority made no changes to the amendment as noticed.

The Authority adopted this amendment on October 3, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code sections 16.5(1) and 16.133.

This amendment will become effective on December 5, 2012.

The following amendment is adopted.

Amend rule 265—15.4(16) as follows:

265—15.4(16) Advertising Posting solicitations. Formal bids and requests for proposals issued by the authority shall be ~~advertised in a daily paper in Iowa~~ posted to the authority’s Internet Web site. The ~~advertisement~~ posting shall indicate that it is a notice to prospective bidders, contain the due date and

IOWA FINANCE AUTHORITY[265](cont'd)

time of opening of the bid or proposal, describe the items to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

[Filed 10/12/12, effective 12/5/12]

[Published 10/31/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/31/12.

ARC 0431C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.133, the Iowa Finance Authority hereby amends Chapter 26, “Water Pollution Control Works and Drinking Water Facilities Financing,” Iowa Administrative Code.

The purpose of this amendment is to eliminate the requirement that annual loan servicing fees for loans made from the Water Pollution Control State Revolving Fund and the Drinking Water State Revolving Fund be paid only at the time of each annual principal payment.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 8, 2012, as **ARC 0244C**. This amendment was also Adopted and Filed Emergency and published as **ARC 0245C** on the same date. The Authority received no public comment on the proposed amendment. The Authority made no changes to the amendment as published under Notice of Intended Action and Adopted and Filed Emergency.

The Authority adopted this amendment on October 3, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code sections 16.5(1) and 16.133.

This amendment will become effective on December 5, 2012, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend paragraph **26.5(2)“c”** as follows:

c. Annual loan servicing fee. The annual loan servicing fee shall be established in the IUP. ~~The fee shall be due at the time of each annual principal repayment.~~

[Filed 10/12/12, effective 12/5/12]

[Published 10/31/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/31/12.

ARC 0416C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board hereby amends Chapter 90, “Administration of the Boiler and Pressure Vessel Program,” and Chapter 91, “General Requirements for All Objects,” Iowa Administrative Code.

The amendment to rule 875—90.1(89) excludes from regulation an object that was intended by the manufacturer to operate at 3 pounds per square inch or less if the object is in fact operating at 3 pounds per square inch or less. The amendment to subrule 91.1(2) makes Iowa's regulations current with the most recent developments regarding American Society of Mechanical Engineers' code stamps.

The purposes of these amendments are to update the rules and implement legislative intent.

LABOR SERVICES DIVISION[875](cont'd)

Notice of Intended Action was published in the September 5, 2012, Iowa Administrative Bulletin as **ARC 0322C**. No public comment was received on the proposed amendments. These amendments are identical to those that were published under Notice of Intended Action.

After analysis and review of this rule making, a positive impact on jobs could exist. These amendments limit regulation on objects with extremely low pressure.

These amendments are intended to implement Iowa Code chapter 89.

These amendments shall become effective on December 5, 2012.

The following amendments are adopted.

ITEM 1. Amend rule 875—90.1(89) as follows:

875—90.1(89) Purpose and scope. These rules institute administrative and operational procedures for implementation of Iowa Code chapter 89. An object shall not be considered “under pressure” and shall not be within the scope of Iowa Code chapter 89 when there is clear evidence that the manufacturer did not intend it to be operated at more than 3 psi and the object is operating at 3 psi or less.

ITEM 2. Amend subrule 91.1(2) as follows:

91.1(2) ASME code cases. If the manufacturer of an object listed ASME Code Case 2529, 2568, 2571, ~~or 2571-1~~, 2710, or 2714 on the manufacturer’s data report for the object and the object is otherwise in compliance with all applicable provisions, the object is in compliance with these rules.

[Filed 10/10/12, effective 12/5/12]

[Published 10/31/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/31/12.

ARC 0421C

PAROLE BOARD[205]

Adopted and Filed

Pursuant to the authority of Iowa Code section 906.3, the Board of Parole hereby amends Chapter 8, “Parole and Work Release Considerations,” Iowa Administrative Code.

The adopted amendments remove the link between risk assessment score and board member votes for release. With these changes, three affirmative votes are the most required for the release of any single inmate.

Notice of Intended Action was published in the September 5, 2012, Iowa Administrative Bulletin as **ARC 0320C**. No one appeared at the public hearing held on September 25, 2012. The adopted amendments are identical to those published under Notice.

These amendments were adopted during an October 11, 2012, meeting of the Iowa Board of Parole.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 906.3, 906.4, and 906.5.

These amendments will become effective on December 5, 2012.

The following amendments are adopted.

ITEM 1. Rescind subrule 8.15(2) and adopt the following new subrule in lieu thereof:

8.15(2) The board shall grant parole or work release to an inmate if at least three members of the board agree that the inmate can be released without detriment to the community or to the inmate. If three members do not agree, the board shall deny parole or work release.

PAROLE BOARD[205](cont'd)

ITEM 2. Rescind and reserve subrule **8.15(3)**.

ITEM 3. Rescind and reserve subrule **8.15(4)**.

[Filed 10/11/12, effective 12/5/12]

[Published 10/31/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/31/12.

ARC 0412C

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Adopted and Filed

Pursuant to the authority of Iowa Code section 543D.5, the Real Estate Appraiser Examining Board hereby amends Chapter 8, "Investigations and Disciplinary Procedures," and Chapter 11, "Continuing Education," Iowa Administrative Code.

The adopted amendments are intended to incorporate the aggravating and mitigating factors included in the Appraisal Foundation's Voluntary Disciplinary Action Matrix into rule 193F—8.15(272C,543D), to broaden the rule to apply to the Board's consideration of all types of disciplinary sanctions, rather than the current focus on the imposition of civil penalties, and to add factors that the Board has historically considered but that are not adequately reflected in the current rule. The amendments will also allow a respondent to have such information within a file that will allow the respondent an opportunity to have education but still preserve the anonymity of the complainant or the peer reviewer in the process.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 11, 2012, as **ARC 0209C**. No public comment was received on these amendments. These amendments are identical to those published under Notice.

These amendments were adopted by the Board on September 25, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 17A, 272C, 543D, and 546.

These amendments shall become effective December 5, 2012.

The following amendments are adopted.

ITEM 1. Amend rule 193F—8.7(272C,543D) as follows:

193F—8.7(272C,543D,546) Confidentiality of complaint and investigative information.

8.7(1) All complaint and investigative information received or created by the board is privileged and confidential pursuant to Iowa Code subsection 272C.6(4). Such information shall not be released to any person except as provided in that section and in this rule.

8.7(2) Disclosure to the subject of the investigation.

a. Legal authority. Pursuant to Iowa Code section 546.10(9), the board may, prior to the initiation of a disciplinary proceeding, supply to a licensee who is the subject of a disciplinary complaint or investigation all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information as the board in its sole discretion believes would aid the investigation or resolution of the matter.

b. General rule. As a matter of general policy, the board shall not disclose confidential complaint and investigative information to a licensee except as permitted by Iowa Code section 272C.6(4). Disclosure of a complainant's identity in advance of the filing of formal disciplinary charges, for instance, may adversely affect a complainant's willingness to file a complaint with the board.

c. Exceptions to general rule. The board may exercise its discretion to release to a licensee information that would otherwise be confidential under Iowa Code section 272C.6(4) under narrow circumstances, including but not limited to the following:

(1) Following a board determination that probable cause exists to file disciplinary charges against a licensee but prior to the issuance of the notice of hearing, the board may provide the licensee with a

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

peer review report or investigative report or with expert opinions, as reasonably needed for the licensee to assess the merits of a settlement proposal.

(2) The board may release to a licensee who is the subject of a board-initiated investigation, including investigations initiated following the board's receipt of an anonymous complaint, such records or information as may aid the investigation or resolution of the matter.

(3) The board may disclose information from a peer review report or consultant's report when soliciting the licensee's position will aid in making the probable cause determination or when providing the information would be educational to the licensee, and such disclosure can be made to the licensee without revealing identifying information regarding the complainant, peer reviewer or consultant.

ITEM 2. Rescind rule 193F—8.15(543D) and adopt the following new rule in lieu thereof:

193F—8.15(272C,543D) Mitigating and aggravating factors. Factors the board may consider when determining whether to impose discipline and what type of discipline to impose include:

8.15(1) History and background of respondent.

a. Whether the respondent was a registered associate appraiser or a certified appraiser at the time of the violation.

b. Prior disciplinary history or cautionary letters.

c. Length of certification or registration at the time of the violation.

d. Disciplinary history of current or prior supervisor.

e. Degree of cooperation with investigation.

f. Extent of self-initiated reform or remedial action after the date of the violation.

g. Whether the volume or geographic range of the respondent's practice is, or was at the time of the violation, reasonable under the circumstances.

h. Whether the respondent practiced with a lapsed, inactive, suspended, revoked, or surrendered certificate or registration.

8.15(2) Nature of violation.

a. Length of time since the date of the violation.

b. Whether the violation is isolated or recurring.

c. Whether there are multiple violations or appraisals involved.

d. Whether the violation is in the nature of an error or situational carelessness or neglect, or reflects a more fundamental lack of familiarity with applicable appraisal methodology or standards.

e. Indicia of bad faith, false statements, deceptive practices, or willful and intentional acts, whether within the circumstances of the violation or in the course of the board's investigation or disciplinary proceeding.

f. Evidence of improper advocacy or other violation of the USPAP ethics rule or of Iowa Code section 543D.18 or 543D.18A(1).

g. The clarity of the issue or standard involved.

h. Whether the respondent practiced outside the scope of practice authorized by respondent's certification or registration.

i. Whether the violation relates to the respondent's supervisory role, the respondent's individual appraisal practice, or both.

8.15(3) Interest of the public.

a. Degree of financial or other harm to a client, consumer, lending institution, or others.

b. Risk of harm, whether or not the violation caused actual harm.

c. Economic or other benefit gained by respondent or by others as a result of the violation.

d. Deterrent impact of discipline.

e. Whether the respondent issued a corrected appraisal report when warranted.

ITEM 3. Amend paragraph **11.2(1)“b”** as follows:

b. The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases the appraiser's skill, knowledge and competency in real estate appraising. Credit may be granted for educational offerings that are consistent with the purpose of continuing education.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

A minimum of 14 21 of the required 28 credit hours must involve courses that address one or more of the following subject areas: real estate appraisal law and rules, report writing, cost approach, sales approach, income approach, economic principles, legal considerations in appraisal, real estate markets and analysis, highest and best use analysis, appraisal math and statistics, site value, valuation of partial interests or appraisal ethics.

[Filed 10/4/12, effective 12/5/12]

[Published 10/31/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/31/12.

ARC 0410C

REAL ESTATE COMMISSION[193E]**Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 543B.9, the Real Estate Commission hereby amends Chapter 13, "Trust Accounts and Closings," Iowa Administrative Code.

The purpose of this amendment is to change the mailing address of the Unclaimed Property Division of the Treasurer of the State of Iowa set out in subrule 13.1(14).

In compliance with Iowa Code section 17A.4(3), the Real Estate Commission finds that notice and public participation are unnecessary because the amendment simply updates the mailing address and has no other effect on licensure or professional practice.

The Iowa Real Estate Commission adopted this amendment on September 6, 2012.

This amendment is intended to implement Iowa Code chapter 543B.

This amendment will become effective December 5, 2012.

The following amendment is adopted.

Amend subrule 13.1(14) as follows:

13.1(14) Trust funds that are not traceable to any individual for disbursement from the trust account are unclaimed property. Unclaimed trust funds must be entered on a separate individual ledger for accounting purposes. In accordance with Iowa Code chapter 556, after three years, unclaimed trust funds shall be paid to:

~~Treasurer~~
~~State of Iowa~~
~~Unclaimed Property Division~~
~~Hoover State Office Building~~
~~Des Moines, Iowa 50319~~
Treasurer, State of Iowa
Unclaimed Property
P.O. Box 10430
Des Moines, Iowa 50306

[Filed Without Notice 10/3/12, effective 12/5/12]

[Published 10/31/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/31/12.

ARC 0414C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby amends to Chapter 12, "Filing Returns, Payment of Tax, Penalty and Interest," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXV, No. 5, p. 425, on September 5, 2012, as **ARC 0323C**.

Iowa Code section 15.331A provides for a sales and use tax refund for eligible businesses approved by the Iowa Economic Development Authority under the High Quality Jobs Program, Enterprise Zone (EZ) Program, or Housing Enterprise Zone Program. This amendment makes changes to 701—Chapter 12 by adding new rule 701—12.19(15) to provide clarification on how eligible businesses can claim this sales and use tax refund.

This amendment is identical to that published under Notice of Intended Action.

After analysis and review of this rule making, no adverse impact on jobs has been found. The sales and use tax refund may positively impact job and economic growth for businesses in the state of Iowa.

This amendment is intended to implement Iowa Code section 15.331A.

This amendment will become effective December 5, 2012, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The following amendment is adopted.

Adopt the following new rule 701—12.19(15):

701—12.19(15) Sales and use tax refund for eligible businesses. For eligible businesses approved under the high quality jobs program, enterprise zone program, or housing enterprise zone program by the Iowa economic development authority, a refund of sales and use tax is available.

12.19(1) Sales and use tax eligible for refund. The sales and use tax for which the eligible business can receive a refund consists of the following:

a. Sales and use tax paid for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the eligible business.

b. If the eligible business is involved in a warehouse or a distribution center, sales and use tax attributable to racks, shelving and conveyor equipment.

12.19(2) Sales and use tax ineligible for refund. The sales and use tax for which the eligible business cannot receive a refund consists of the following:

a. Any local option sales tax paid is not eligible for the refund. The refund is limited to the state sales and use tax paid.

b. Any sales and use tax attributable to intangible property and furniture and fixtures is not eligible for the refund.

12.19(3) Claiming the refund. To receive the refund, the eligible business must file a claim for refund within one year of project completion. For a manufacturing facility, project completion is the first date upon which the average annualized production of finished project for the preceding 90-day period at the manufacturing facility is at least 50 percent of the initial design capacity of the facility. For all other facilities, project completion is the date of completion of all improvements necessary for the start-up, location, expansion or modernization of the business.

a. To request a refund of the sales and use tax paid for gas, electric, water or sewer utility services used during construction, the eligible business must file Form IA 843, Claim for Refund, with the department of revenue. The claim shall include the agreement number given by the Iowa economic development authority, along with copies of invoices or a schedule to support the refund amount.

REVENUE DEPARTMENT[701](cont'd)

b. To request a refund of the sales and use tax paid on goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor relating to the construction or equipping of a facility, the eligible business must file the Construction Contract Claim for Refund form, along with the Iowa Contractor's Statement, with the department of revenue. It is not necessary to attach invoices to the Construction Contract Claim for Refund form.

c. To request a refund of the sales and use tax attributable to racks, shelving and conveyor equipment, the eligible business must file Form IA 843, Claim for Refund, with the department of revenue. The claim shall include the agreement number given by the Iowa economic development authority, along with copies of invoices or a schedule to support the refund amount. The combined amount of refunds attributable to sales and use tax paid on racks, shelving and conveyor equipment, along with tax credit certificates issued for sales and use tax paid on racks, shelving and conveyor equipment provided in 701—subrule 52.10(5), shall not exceed \$500,000 during a fiscal year. The requests for refunds or tax credit certificates will be processed in the order the requests are received on a first-come, first-served basis until the amount of refunds or credits authorized for issuance has been exhausted. If applications for refunds or tax credit certificates exceed the \$500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

[Filed 10/10/12, effective 12/5/12]

[Published 10/31/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/31/12.

ARC 0415C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby amends Chapter 240, "Rules Necessary to Implement the Streamlined Sales and Use Tax Agreement," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXV, No. 5, p. 426, on September 5, 2012, as **ARC 0326C**.

The subject matter of rule 701—240.7(423) is the effective dates of taxation rate increases or decreases when certain services are furnished. The amendment to the rule implements the amendment made by the Streamlined Sales Tax Governing Board to the Streamlined Sales and Use Tax Agreement (SSUTA), as required by the SSUTA, which is adopted under 2011 Iowa Code chapter 423.

This amendment is identical to that published under Notice of Intended Action.

The amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

After analysis and review of this rule making, no adverse impact on jobs has been found.

This amendment is intended to implement 2011 Iowa Code chapter 423.

This amendment will become effective December 5, 2012, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The following amendment is adopted.

Amend rule 701—240.7(423) as follows:

701—240.7(423) Effective dates of taxation rate increases or decreases when certain services are furnished. Certain taxable services are usually furnished over an extended period of time (e.g., utilities, janitorial, and ministorage services), and the user of such a service is billed at regular intervals (e.g., monthly or quarterly). The beginning date when a rate change is imposed on the sales price of this type of service differs, depending upon whether a rate increase or rate decrease is involved. If the rate of taxation has been increased, the beginning date of the rate change shall be the first day of the first billing period occurring on or after the effective date of the rate increase. If the rate of taxation has been

REVENUE DEPARTMENT[701](cont'd)

decreased, ~~the beginning date of the rate change shall be the date on which the first bill for furnishing the service is rendered for payment, subsequent to~~ the new rate shall apply to bills rendered on or after the effective date of the rate decrease.

This rule is intended to implement ~~2005~~ 2011 Iowa Code chapter 423, subchapter IV.

[Filed 10/10/12, effective 12/5/12]

[Published 10/31/12]

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Administrative Services Department

Objection to Personnel Department rule 581—1.1(19A), definition of “confidential employee,” imposed by the Administrative Rules Review Committee and filed on December 2, 1986, was lifted by the Committee [from rule 11—50.1(8A)] at its meeting held October 9, 2012.